



County of Los Angeles  
**CHIEF ADMINISTRATIVE OFFICE**

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March 1, 2007

To: Supervisor Zev Yaroslavsky, Chairman  
Supervisor Gloria Molina  
Supervisor Yvonne B. Burke  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

From: David E. Janssen  
Chief Administrative Officer

**REPORT ON COUNTY OF LOS ANGELES SERVICE CONNECTED DISABILITY  
RETIREMENTS**

On January 4, 2005, by motion of Supervisor Gloria Molina, your Board instructed the Chief Administrative Office (CAO), the Auditor-Controller (A-C), and the Los Angeles County Employees Retirement Association (LACERA) to investigate and report on the methodology applied to approve the County of Los Angeles (County) Service Connected Disability Retirement (SCDR) benefits; to identify whether or not any SCDR fraud or abuse exists; verify the investigation with an analysis of County SCDR applications; and provide a comparison of the County to other State of California (California) counties governed by the County Employees Retirement Law of 1937 (1937 Act).

Buck Consultants, LLC (Buck) was retained to review County SCDR applications and survey the other 1937 Act counties, of which there are 19. Included in this report are: report from Buck (Attachment A); LACERA's response to Buck's report (Attachment B); list of recommendations to reduce SCDR expense (Attachment C); and Sheriff Department's (Sheriff) and Fire Department's (Fire) policies concerning permanent light-duty assignments (Attachment D-1 and D-2).

### **Summary of Buck's Report**

To assure independent analysis, the A-C selected Buck to analyze the County's SCDR applications and process. Buck's review substantiates the findings of prior reviews of the County's SCDR process. Buck found:

1. No evidence of fraud or abuse in either the SCDR application process or approval of SCDR benefits.
2. LACERA's application and approval procedures for SCDRs are currently followed.
3. Buck asserts that California case law allows more employees to qualify for SCDRs than originally intended by the 1937 Act. Buck states,  

"The original intent, as stated in the '37 Act, was 'to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employee removed.'"
4. Legislative change is required to reform the 1937 Act to its original intent and reduce SCDR expense. Twelve of Buck's 15 SCDR recommendations require legislative change.
5. Buck suggested reviewing safety departments' approach to permanent light-duty work. Accordingly, during 2006, Sheriff and Fire again reviewed their policies concerning returning injured safety employees to permanent light-duty positions. Both departments reaffirmed that doing so "would undoubtedly have a negative impact" on the efficiency of those departments (see Attachments D-1 and D-2).

### **Factors Influencing the County's SCDR Experience**

1. SCDR applicants are exposed to minimal financial risk when applying for an SCDR.

Safety employees experiencing job-related injuries may legally apply for SCDR benefits. County job-related disability benefits differ from non-job-related disability benefits, and offer more benefit to the injured employee. SCDR pays the greater of an employee's earned service retirement or a disability benefit. A job-related disability provides a minimum retirement benefit of 50 percent of an employee's compensation, while a non-job-related disability approximates 33 percent.

An employee disabled from a job-related injury, who previously earned a service retirement greater than the minimum SCDR retirement benefit of 50 percent, greatly increases the employee's benefits if LACERA grants an SCDR; for example, more favorable tax treatment and a higher survivor income benefit, 100 percent rather than 65 percent.

If an SCDR application is denied, the employee only incurs the cost of employee-paid medical examinations or legal expense.

2. Reducing the number of County SCDRs is a challenge in an environment wherein many safety employees possess extensive knowledge and understanding of the SCDR process. That environment includes a well-established external support network to assist employees filing SCDR applications.
3. Future increases in SCDR costs may be minimized through effective workforce programs, such as Fire's wellness program, *Fitness for Life!*, County departments' Loss Control and Prevention Programs, and other Occupational Health Programs. Effective mitigation and prevention of worker injury, and continued assurance that applicants and employees are physically able to perform arduous duty, help sustain a healthy and safe workforce. Accordingly, the CAO recommends departments' continued support of such programs.
4. County safety departments are endeavoring to return more injured employees to work. The success of that effort is illustrated in the recent reduction of California Labor Code 4850 expense. The five County departments with California Labor Code 4850 eligible employees generated a 24.9 percent decrease in such expense from calendar year 2003 to calendar year 2005, \$48.6 to \$36.5 million.

### **Conclusion**

As noted in Buck's 2006 review, in LACERA's response to Buck's review, and in previously published studies concerning County SCDRs:

- Only changes to the 1937 Act's SCDR eligibility standards and/or the benefit levels will reduce the number of County SCDR applications.
- Employees applying for SCDRs attempt to maximize legally-available benefits.

Based upon Buck's review and the CAO's assessment of the County's SCDR process:

1. The CAO supports LACERA's decision to require its external auditor to include a review of the SCDR application process in LACERA's annual audit. The inclusion of an annual review of SCDR applications assures continued and objective monitoring and reporting to your Board.
2. The CAO recommends the County continue: a) supporting workers' compensation or SCDR reform that prevents abuse of both systems, and b) opposing legislation that weakens the California workers' compensation reforms enacted in 2003 and 2004.

The percentage of SCDRs granted to County safety employees is higher than in other 1937 Act counties. Because the SCDR applicant has both legal and financial incentives to apply for an SCDR, the percentage of County SCDRs will not decrease unless the County's safety departments return more injured safety employees to permanent light-duty assignments, or the 1937 Act is reformed through the legislative process. Both Sheriff and Fire made reasonable business decisions that returning more safety employees to such assignments would negatively impact the departments' operations and service to citizens.

For the foreseeable future, any reform of the 1937 Act will be difficult to achieve. For example, Senate Bill 877 (Speier), referenced by Buck in its review as an example of potential 1937 Act reform, was not enacted. Additionally, during the 2006 legislative session, Assembly Bill 1368 (Karnette) was enacted. The CAO anticipates AB 1368 will increase the number of SCDR applications. AB 1368 enables safety employees to receive a 100 percent disability retirement benefit even though factors unrelated to work caused a significant portion of the employees' permanent disabilities.

The contents of this Board memorandum was reviewed and discussed with the Auditor-Controller.

If you would like to discuss this review, please call me or your staff can contact Rocky A. Armfield, County Risk Manager, at (213) 351-5346.

DEJ:SRH  
RAA:COB:sg

#### Attachments

- c: Executive Officer, Board of Supervisors  
Auditor-Controller  
County Counsel  
Fire Department  
Los Angeles County Employees Retirement Association  
Sheriff's Department



Explore Excellence<sup>SM</sup>

## **County of Los Angeles**

### **Performance Review of Service-Connected Disability Retirements for Safety Personnel**

**Revised August 7, 2006**

August 7, 2006

Ms. Cathy O'Brien  
Acting Assistant Division Chief  
Chief Administrative Office  
3333 Wilshire Blvd., Suite 1000  
Los Angeles, CA 90010

*Performance Review of Service-Connected Disability Retirements for Safety Personnel*

Dear Ms. O'Brien:

It is with pleasure that we at Buck Consultants submit to the County of Los Angeles our report on the Performance Review of Service-Connected Disability Retirements for Safety Personnel.

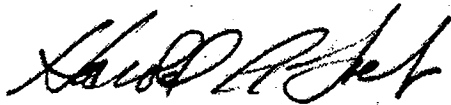
We performed the review "to identify whether or not any fraud or abuse of the SCDR application system exists; determine which benefits the SCDR retirees are receiving and in what amount (including SCDR, workers' compensation, Labor Code section 4850 and LACERA retirement benefits); and analyze how all these benefits are or can be coordinated."

Our report presents our findings along with a number of suggestions we have for improving and reforming the system.

We want to thank the County and LACERA for the support and assistance we received in performing the review. If there are any questions about our report or the review process, we would be pleased to address them.

We appreciate, as always, the opportunity to serve the County of Los Angeles.

Sincerely,



Harold A. Loeb, A.S.A.  
Principal and Consulting Actuary

HL:jtm  
Enclosure

## Executive Summary

The County of Los Angeles retained Buck Consultants to conduct a performance review of 35 approved service-connected disability retirement (SCDR) applications and to survey other counties that are bound by the State of California's County Employees Retirement Law of 1937 ('37 Act).

The purpose of the review and survey was to determine if any fraud or abuse of the SCDR application process exists and to identify areas where the SCDR system (the system) can be better aligned to its original intent. The original intent, as stated in the '37 Act, was to "provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of the public service without prejudice and without inflicting a hardship upon the employee removed." Over the years, the standard for determining whether an employee's work "contributed substantially" to the disability has been clarified by judicial interpretation of the intent of the '37 Act. In *Bowen v. Board of Retirement* (1986), the court held that "substantial" referred only to the evidence supporting job causation, not to the causation itself. As a result, it has become easier to qualify for a SCDR. In addition, there is no downside to applying for SCDR, and it appears that more SCDRs are approved than the original intent of the law would warrant.

We found no cases of fraud (defined here as the deliberate attempt to qualify for a benefit that the member knowingly cannot support by medical evidence) in the review. However, we did identify four cases where the use of the system contradicted the original intent of the system as described above. In one case, a member applied for his disability retirement after reaching his mandatory retirement age; i.e., there was no loss of potential income. In two cases, the service connection was minimal, but met the standard set by judicial interpretation. The fourth case involved an individual who was awarded a disability retirement at an advanced age, wherein the primary cause of the disability was the aging process; i.e., very little of the disability was work related, but perhaps sufficient to meet the current applicable standard.

This report presents many suggestions to improve and reform the system, most of which require legislative action. We believe that certain financial incentives must be eliminated by allowing offsets to disability retirement benefits for other income, such as other employment or disability benefits from private insurance.

## Executive Summary

Furthermore, the "qualification bar" must be more clearly defined and raised by

- Tightening the causation standard by requiring at least 51% job causation
- Changing the amount of SCDR income so that a retiree who is not disabled from any occupation has his benefit coordinated with other sources of income
- Apportioning causes so that lesser degrees of job causation are awarded lower benefits.

Even with these reforms, there will continue to be no downside to filing an application; applicants will continue to have nothing to lose and everything to gain by filing for an SCDR. Filing for SCDR will continue to be a financially attractive for safety employees.



# Introduction

At the request of the County of Los Angeles ("the County"), Buck Consultants LLC (formerly Mellon's Human Resources & Investor Solutions) ("Buck") conducted a review of 35 safety member Service Connected Disability Retirement ("SCDR") application files and a survey of other California counties that are bound by the State of California's County Employees Retirement Law of 1937 ("37 Act"). This report contains the results of the study.

## **Background**

The Los Angeles County Employees Retirement Association ("LACERA") is a government entity governed by the '37 Act. LACERA's Board of Retirement ("LACERA Board") is responsible for the investigation and approval/denial of disability retirement applications in accordance with the eligibility criteria set forth in the '37 Act.

To be approved for a SCDR, the applicant must meet two criteria:

1. The applicant must be permanently incapacitated from the performance of the applicant's work; and
2. The applicant's employment must be an element that "contributes substantially" to the applicant's incapacity.

If approved for a SCDR, the applicant receives the higher of the following two benefits:

1. The retirement benefit the applicant earned on the basis of age, length of service, and final compensation; and
2. 50% of the applicant's final compensation as defined in the '37 Act.

In addition, the applicant on retirement is entitled to:

1. Federal and state tax-exempt status on the first 50% of final compensation; and
2. An increase in the survivor benefit from 65% for regular service retirement to 100% for SCDR. This means that when a SCDR recipient dies, his surviving spouse receives 100% of his benefit (also tax-exempt on the first 50%) as opposed to the taxable 65% payable to the surviving spouse of a non-disabled or non-service-connected disabled retiree.

# Introduction

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If an employee is denied a disability retirement (service-connected or not) by the LACERA Board, the employee may be entitled to reinstatement to pay status with full pay and benefits back to the date of dismissal from pay status if the dismissal was because of disability.<sup>1</sup>

In addition, safety employees may, prior to retirement, receive special leave at full pay for up to 365 aggregate days per injury that is deemed compensable under the workers' compensation program. This benefit is provided by Labor Code section 4850 ("4850 benefits"), administered by the County, and is tax-free.

SCDR benefits are not reduced by other benefits (long-term disability payments under the County's benefit plan are offset by payments from LACERA) or payments (including wages from subsequent employment) the safety member receives. The process of preventing overlapping income sources, called "coordination of benefits," is not applied to SCDR.

The County is concerned that it has experienced a higher incidence of SCDR than other '37 Act counties have.

## Objectives of the Study

Buck's consulting services were provided pursuant to and in accordance with Master Agreement No. 74121.

The objectives of the study are as follows:

1. To determine if any fraud or abuse of the SCDR application process exists
2. To determine which benefits SCDR retirees are receiving and in what amount (including SCDR, workers' compensation, and Labor Code Section 4850 payments)
3. To analyze how all these benefits are or can be coordinated
4. To recommend changes in the LACERA Board's processes for determining eligibility for SCDR, if appropriate

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<sup>1</sup> Government Code §31725, plus *McGriff v. County of Los Angeles* (1973) 33 Cal.App.3d 394 and *Leili v. County of Los Angeles* (1983) 148 Cal.App.3d 985.

## Introduction

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5. To recommend changes to the '37 Act that will return the system back to the original intent of the law.

More-specific objectives and the deliverables for the study are detailed and addressed in the section entitled Interpretation of Results in Light of Specific Project Objectives.

### Tasks Completed

Buck completed the following tasks:

1. Reviewed documentation provided by the County, including text and summaries of pertinent legislation, past SCDR studies, and past recommendations for reform
2. Developed a review information form for tracking data on each file reviewed (see Attachment 6 for the data collected)
3. Met with LACERA staff to establish review protocols and arrange for access to files
4. Reviewed the written files of 35 SCDRs
5. Attended a meeting of the LACERA Board to observe the approval/denial deliberations. The deliberations we witnessed did not pertain to the files we reviewed for this study; those deliberations took place before this study was commissioned
6. Developed, with input from the County and LACERA, a questionnaire for other '37 Act counties to complete
7. Distributed the survey to other '37 Act counties
8. Performed independent research on the disability retirement experience of other large metropolitan areas
9. Analyzed review results, questionnaire responses, and cost data provided by the County in light of our experience conducting similar studies
10. Prepared this report.

# Results

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## Results of Claim Review

The 35 County selected files we reviewed came from the following County entities:

Sheriff's Department	10
Fire District	12
Department of Probation	5
Office of Public Safety	5
<u>District Attorney</u>	<u>3</u>
Total	35

The intent was to review only approved cases, but the selection process inadvertently included one denied case. We agree with the Board's decision to deny this SCDR. There were no medical reports that indicated the applicant was permanently disabled.

On the basis of our evaluation of the written files, we have the following comments on the LACERA Board's decisions on the 34 approved cases.

<u>Number of Files</u>	<u>Action</u>	<u>Comment</u>
25	Approved	We are in complete agreement with the Board's decision.
5	Approved	Although the decision is reasonable, the claims would have been denied if the law did not permit a SCDR application to coincide with an employee's normal retirement date.
3	Approved	Although these cases may meet the language of the law, it is our opinion that they would be denied if our recommendations discussed later in this report were enacted. A summary of each file follows.
1	Approved	We were not provided with sufficient medical documentation to form an opinion on this case.

Of the 34 members whose applications for a SCDR were approved, 26 were eligible for a normal retirement benefit, with 20 members having more than 30 years of service, and 24

## Results

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being at least age 55. The average age of the 34 members was 54, and the average number of years of service was 26.

We discuss three approvals (Claim Numbers 29, 31, and 34) in the following section that illustrate our comments.

### Results of Survey of '37 Act Counties

Survey results have summarized for all of the '37 Act counties. We have supplemented survey information with statistics gathered from counties' annual reports. The results are presented in Attachment 4.

From the information collected, we compared the number of SCDRs as a percent of the total safety member retiree population in Los Angeles to the percentages at other '37 Act counties. For this comparison, we excluded non-SCDRs. As of June 30, 2004, 61% of the Los Angeles County safety member retirees retired with a SCD. At the other 19 counties (based on the most recent date for which information was available), the percent was 33%. During the fiscal year 2003-04, 53% of the retirement applications approved by the LACERA Board were SCDRs. At the 15 counties for which we were able to obtain data, only 18% were SCDRs.

The survey results appear to indicate that a more liberal standard is being applied by LACERA, despite the fact that all '37 Act systems are obligated to apply the standards set forth in the '37 Act, as interpreted by the appellate courts. In interviews with staff members at three other '37 Act counties, we were unable to determine any clear differentiators in the approval process.

## Interpretation of Results in Light of Specific Project Objectives

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The following sections address the specific deliverables called for in the Statement of Work.

### **Identify whether or not any fraud or abuse of the SCDR exists**

No evidence of fraud was found during this review. However, we found four approved cases that would have been denied if the legislative reforms we recommend were enacted.

It should be noted that the consultants on this project are not physicians and do not dispute the medical findings in the cases reviewed. Rather, our opinion is based on whether the cases would have been approved under the job causation standard in the '37 Act. According to the '37 Act, the employee's work for the County must have "contributed substantially" to the disability. "Contributed substantially" is not defined in the statute. In *Bowen v. Board of Retirement* (1986), the Supreme Court of California held that "substantial" referred only to the evidence supporting job causation, not to causation itself. The court went further to hold that the connection itself may be "small" as long as it is more than "infinitesimal." Once the Supreme Court rendered this interpretation, it has necessarily been applied ever since.

### *Claim Number 29*

Applicant was a Fire Captain with 36 years of service who attained age 60 one day after his last day worked. He claimed degenerative arthritis of the knees, meniscal tears, injuries to his shoulder and ankle, and an aggravation of his shoulder and knee injuries caused by a compulsory department physical in the month of his retirement. The SCDR application was submitted one day before his mandatory retirement date. In addition, he started new employment with a fire consulting firm 11 days following his mandatory retirement date.

In claim number 29:

- The applicant reported no disabling condition until the day before he was forced to retire. Although he reported numerous medical conditions, none were disabling, as evidenced by his continuing to work.
- There was no loss of future income because he reached the mandatory retirement age.

## Interpretation of Results in Light of Specific Project Objectives

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- The applicant started new employment within days of his mandatory retirement date. Although he was not required to fight fires in his new position, he earned an income and SCDR payments at the same time.

There is nothing fraudulent or illegal about claim number 29. An applicant may claim degenerative injuries at any time during his employment. As long as a physician certifies that the applicant is unable to perform his job and that the disabling cause is work-related, he is eligible for SCDR, even if an alternative job is offered to him. He may even collect SCDR if he works elsewhere because he need only be disabled from his own job. This is called an "own occupation" definition of disability.

Claim number 29 does, however, represent a deviation from the original intent of the '37 Act because:

- A disability was claimed when, because of mandatory retirement, the claimant could not have continued in his job. There was no threat to public safety because of a diminished capacity to protect the public since the claimant could not continue his employment. The medical report indicated that his injuries would have prevented him from continuing in his job, but since his job was removed, there was no loss of income and no hardship caused by the disability.
- Disability retirement payments were collected while the employee earned wages at another job. One of the original intents of the act is "to avoid inflicting hardship upon the employees removed." By making the reforms below, the County would offset SCDR benefits with wages from other employment. A hardship is avoided, since the employee's income would not be less than his SCDR benefit, but a double-income situation is also avoided.

The timing of the disability was such that it appears to have been planned to coincide with the mandatory retirement date, which suggests that the employee was not incapacitated since he was able to work until mandatory retirement.

There were a total of four claims among the 35 we reviewed where the applicant filed for disability after age 60 and 11 claims where the disability application was filed within 90 days of retirement, which suggests that safety members are timing their disability applications to coincide with their normal retirement date.

## Interpretation of Results in Light of Specific Project Objectives

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### *Claim Number 31*

Applicant was a Sergeant in the Sheriff's Department and had 31 years of service. He was age 55 on his last day worked. He had several medical complaints; the reporting physician found the applicant to be permanently disabled, but on a non-industrial basis. The primary cause of the disability was gastritis. Other complaints included injuries to his spine and ankle and other medical conditions, all of which the physician said were not aggravated or accelerated by his work. Information on any workers' compensation benefits was not available to us. In our opinion, his overall condition warrants a non-service-connected disability, which was recommended by the staff. The Board, in consultation with the Board's physician, rejected the reporting physician's opinion and recommended a service-connected disability. Most of his medical conditions appear to be non-work related, and those that might be work related are not disabling.

There is nothing in this claim that is contrary to any laws or any court interpretations of the law. However, the job causation standard contained in the '37 Act is that the employee's work for the County must have "contributed substantially" to the disability. We believe this case does not meet the original intent of the statute.

### *Claim Number 34*

Applicant was a Special Assistant, Safety Police Services. He was age 55 and had more than 32 years of service. He claimed problems with his knees, but no single event caused knee problems; the applicant is claiming cumulative trauma. There is no objective medical evidence either that the knee problem is work related or that it is disabling. Applicant is on dialysis and appears to be disabled because of kidney failure, which is not work related. We believe he is eligible for a non-service-connected disability.

Claim number 34 contains one additional example of how the service-connected disability standard has been weakened. It is not fraudulent to claim an SCDR for any reason. The LACERA Board has to interpret the evidence, using an "all or nothing" approach because the concept of apportionment is not present in the '37 Act. As a result of the 2003-2004 reforms, it does exist in the California workers' compensation system, and allows for a reduction in benefits to reflect the portion of a disability that is not work related. In claim number 34, the Board might have apportioned a significant part of the



## **Interpretation of Results in Light of Specific Project Objectives**

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applicant's disability to non-work-related causes, but that option was not available to the Board.

### **Determine if LACERA policies and procedures meet "best practices" standards for administration of the SCDR process and if they are being applied and followed**

In our review of the 35 files, we found no problems or concerns with the handling of claims.

We did, however, have a problem obtaining the paper documentation for three files that we requested. Although the claims were filed in 2004, we were told that the paper documentation had been destroyed. Consequently, we replaced those files with three new files. The '37 Act gives the Board the right to establish records management procedures, including the disposal of records. The LACERA Board has adopted a policy to maintain all records pertaining to a disability application investigation for one year, after which all personnel, workers' compensation and miscellaneous medical records can be removed from the files.

Paper files should be retained for at least five, and preferably seven years. Some claim departments retain files for the life of the retiree, as do the three Counties we talked to. We recommend at least five years to allow files to be reviewed internally by LACERA for quality control purposes, and externally by the County for studies similar to this review.

### **Determine all benefits the service-connected disability retiree is receiving and in what amount (including SCDR, workers' compensation, Labor Code Section 4850, and LACERA retirement benefits)**

Attachment 6 summarizes the payments to recipients of SCDR.

### **Analyze how all benefits are or can be coordinated**

Currently, there is no coordination of benefits in the SCDR system. When an individual is approved for an SCDR at age 55 or older, the monthly pension payment continues for the lifetime of the retiree, regardless of future employment (even if it is in the same line of

## Interpretation of Results in Light of Specific Project Objectives

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work with another organization), future improvement in the disabling condition, or other benefits received, such as workers' compensation. Even if there are no other forms of income, a former employee can receive more than his pre-disability net pay while he is on SCDR because of the 50%-of-final-compensation tax-free exclusion.

In the non-occupational long-term disability (LTD) industry, the belief that disabled persons must not earn more than they did while working is the foundation of sound underwriting and claims management. Without a reduction in pay during disability, there is less or no incentive to return to work. In the case of SCDR, employees have a significant financial incentive to file for SCDR and not work.

Most LTD plans provide a 60% to 70% income replacement benefit (it is lower than 100% to provide an incentive to work and to account for taxes), and wages paid to the disabled person further reduce the income replacement benefit. These two policies (accounting for taxation in income replacement and coordination of benefits) reduce the incentive to stay off work and ensure that the original intent of LTD insurance is preserved: to *replace* income, not increase it.

### Section 4850

Safety employees may also be entitled to salary continuation of up to 365 aggregate days per injury at full pay (tax-free) under Labor Code Section 4850. This salary continuation often precedes a SCDR claim. Section 4850 provides this salary continuation to safety employees because of their hazardous occupations. The original intent was to ensure that safety employees were not deterred from the performance of their duties out of fear of the loss of their earning capacity.

It is possible for safety employees to be granted 4850 leave and then schedule retirement to coincide with the end of 4850 and sick pay benefits. By doing so, the member receives time off at a higher level of net pay for a year (plus an extra year of retirement plan credit) before receiving a SCDR benefit. Because the system allows it, it is to the employee's benefit to take advantage of 4850 benefits before filing for a SCDR. In the absence of fraud, there is no downside for the employee: the worst that can happen is that the claim is denied, and the member receives a NSCDR or service retirement, if eligible. The economic impact of receiving a SCDR benefit is so significant, that the majority of safety employees apply for a SCDR.

## Interpretation of Results in Light of Specific Project Objectives

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It is not difficult to qualify for a 4850 leave upon approval of a workers' compensation claim. Prior to the 2003-2004 workers' compensation reforms, the disability need not be caused by a condition or sudden injury confirmed by objective medical evidence. In our review, we found that individuals received 4850 payments for the following conditions:

- Heart condition
- Tripping over a file cabinet
- Lifting a ladder
- Bending under a desk
- Injured during a physical agility test
- Fell down stairs while walking to office
- Fell off bicycle (off duty)
- No specific injury (continuous trauma).

## Recommendations for Further Study of SCDR

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In our review, we identified several areas that, although permitted under the law, we believe represent use of the system that contradicts its original intent of allowing employees to be retired “without inflicting a hardship upon the employee removed.” Our research also revealed many opportunities for reform that have been written about for the last 15 years (see Attachment 5). This report incorporates many of those ideas.

All of the recommended reforms require legislation.

1. **Tighten the causation standard.** As noted in previously, the ruling in *Bowen v. Board of Retirement* interpreted “substantial contribution” so that even a slight degree of causation is considered sufficient to qualify the applicant for an SCDR. Section 31720(a) should be strengthened and clarified to require a more significant causal relationship. State Senator Speier submitted Senate Bill 877 to strengthen the standard by requiring “clear and convincing evidence that the employment is a substantial cause of the incapacity.” See Attachment 1 for details.

Alternatively, the standard could be changed to require a minimum percentage of job causation. For example, if the ‘37 Act were modified such that a SCDR must be at least 51% job related, only a few of the 35 reviewed (see Attachment 6) would be eligible to receive a SCDR. Based on this “what if” scenario, we estimate that there would be a significant reduction in the number of employees applying for a SCDR, as well as a significant reduction in the number of approvals.

2. **Facilitate return to work.** An alternative to changing the definition of disability from “own occupation” to “any occupation” is requiring the employee to return to modified duty. In general, both the Sheriff’s and Fire Departments have followed a policy that says that a member must be able to perform arduous tasks to perform his duties. However, they have been willing to allow members to return to non-arduous positions, in some cases, on a temporary basis, after which the member is expected to be able to return to his normal duties. Allowing an applicant to work in transitional modified duty would reduce the number of SCDRs or allow for an offset to the SCDR benefit for wages from employment. This is a common feature of non-occupational disability policies (including the County’s), workers’ compensation, and Social Security. We recommend a review of this practice and its financial impact.

## Recommendations for Further Study of SCDR

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3. **Coordinate benefits.** The County should take a credit against SCDR benefits for all other benefits received, including workers' compensation and any other forms of disability income. Currently, the City of Los Angeles recoups the workers' compensation temporary and permanent disability benefits paid to SCD retirees by deducting them from disability pensions. This practice applies to all injuries, including those before and after the SCD injury.
4. **Apportion benefits.** In the California workers' compensation system, permanent disability benefits can be apportioned among occupational and non-occupational causes. In cases where an injury occurred off work but was aggravated at work, the SCDR benefit would be reduced. This reform has been explored and rejected by the County in the past<sup>2</sup> on the basis that it would affect only a small portion of disabilities (those where the employee has earned a non-service-connected disability of 33-1/3 percent to 50% and where a prior non-occupational injury was aggravated by the current occupational injury). It also was rejected because it goes against the purpose of SCDR, which is to protect the public by allowing service personnel to retire before a physical or mental incapacity interferes with their ability to perform essential safety functions. These are valid concerns, and we recommend studying the potential impact further.
5. **Reduce benefits for other employment.** SCD retirees should be encouraged to work as much as possible. Because the intent of SCDR is to compensate for loss of potential income, there should be an offset when total disability is not present and the retiree is able to engage in other employment. The County should reduce SCDR benefits to some extent by the amount earned in other employment.
6. **Provide an offset for income taxation.** The exemption of up to 50% of the SCD retiree's final compensation from taxation can raise a SCD retiree's take-home pay to a level that exceeds his pre-disability earnings and encourages an SCDR filing whether a disability actually exists or not. The "tax shelter" is one of two benefits enjoyed by the retiree (the other being the increase in survivor benefits from 65% to 100% of the SCD retiree's pension), which partially explains the large number of applications filed by employees who continue working to normal retirement age.

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<sup>2</sup> May 5, 2000 letter from David E. Janssen, Chief Administrative Officer to the Supervisors of the County of Los Angeles entitled Report on Service-connected Disability Retirement Benefits, Attachment, pages 11-13.

## Recommendations for Further Study of SCDR

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notwithstanding disabling injuries, such as the applicant in claim number 29. Although tax policy is set at the federal and state levels and is not likely to change, the '37 Act could be amended to allow an offset to disability benefits that matches the tax savings.

7. **Base benefit on severity.** The California workers' compensation system provides for a permanent disability benefit that increases with the severity of the injury. Based on the *American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition* (the AMA Guides), the system is based on an impairment schedule that is adjusted for age and loss of future earning capacity, rather than an all-or-nothing approach. A physician evaluates an injured worker's level of impairment after that worker reaches a point of maximum medical improvement ("Permanent and Stationary"). The adjusted disability rating is assigned a monetary value. The system acknowledges that a severely disabled person has less opportunity to find subsequent employment than does a minimally disabled person. Further study would be needed to develop an appropriate rating system for the County SCDR system. The downside of this approach is that it may lead to more appeals and potentially litigation.
8. **Limit use of the 100% survivor benefit.** The survivor benefit for SCD retirees is 100% of the SCD retiree's benefit, as opposed to the 65% for service and non-service-connected disability retirees. This benefit provides an incentive to file for SCDR. Instead, the County should maintain the 65% benefit for all service-connected and non-service-connected disability retirements. The 100% survivor benefit would remain for survivors of safety employees killed in the line of duty.

Alternatively, the 100% survivor benefit could be paid to a survivor if the SCD retiree dies within, say, three years of retirement and the cause of death is consistent with the disabling condition that justified the SCDR. If the retiree survives for more than three years after retirement, the survivor benefit is reduced to 65%.

The City of Los Angeles provides a 60% survivor benefit for both service and SCD retirements. However, if a member on a SCDR dies within three years of his pension effective date, the survivor receives 75% of the member's final compensation if the death is due to the SCD.

## Recommendations for Further Study of SCDR

9. **Implement a DROP.** A Deferred Retirement Option Plan (DROP) allows employees to "retire" but continue working for a fixed maximum number of years. During the DROP period, employees are paid their normal wage, and all other benefits and conditions of employment continue. Their pension is calculated as of their DROP entry date and the monthly pension is nominally deposited to a tax-deferred account that is credited with a stipulated rate of interest. On actual retirement, pension benefits begin to be paid directly to the retiree, and the retiree receives the balance of the tax-deferred account. Many entities in California and elsewhere (for example, the cities of Los Angeles and Dallas) have implemented a DROP, and DROP participants are much less likely to apply for SCDR. In some DROP programs, if retirees are approved for SCDR, they forfeit the balance of their DROP account and the pension is recalculated as an SCDR benefit as of the disability retirement date. DROP can be designed to be cost neutral. See Attachment 2 for details.
10. **Require SCDR to avoid 4850 payments.** Currently, safety employees become eligible for 4850 benefits on acceptance of a workers' compensation claim. Even when there is medical evidence that they will never return to work, employees may receive 4850 benefits for one year before the SCDR process begins. Requiring an employee's retirement in those cases will eliminate one year of 4850 payments and begin SCDR proceedings sooner. Currently, initiating SCDR to avoid 4850 payments is not allowed under Section 4850.
11. **Change the definition of final pay.** The County uses a one-year average pay to calculate the pension benefit. There appears to be a common practice among County employees approaching retirement of "spiking" their final pay. Pension spiking results, in part, from the inclusion of pay for unused vacation, sick leave and other forms of one-time-only payments. Pension spiking was evident in the review. The average monthly pay rate for the last pay period worked for the 35 cases we reviewed was \$6,895.68. However, the one-year average monthly salary for calculating pension benefits was \$7,366.84. This 6.8% increase in final compensation boosts the pension benefit the retirees receive. (See Attachment 6.)

The '37 Act should be amended to include only base salary in the calculation of average monthly salary. Specifically excluded should be payoff of accrued vacation and any other forms of one-time-only payments.

## Recommendations for Further Study of SCDR

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Alternatively, the '37 Act permits using a three-year average instead of a one-year average. The three-year average monthly salary for this group of retirees is \$7,043.24. Although it still is greater than the pay rate in effect for the last pay period worked, it represents a reduction from the current definition of pay used to calculate the pension in the reviewed files, and more closely approximates the final month's pay rate. This change, if adopted by the Board of Supervisors, could be applied only to new members by creating a new tier.

12. **Delay cost-of-living adjustments.** When an employee retires, he is entitled to an annual cost-of-living adjustment (COLA). The maximum annual COLA is between 2% and 3%, depending on the retiree's plan. Under the LACERA plans, COLAs are paid on April 1 of each year. An individual who retires on March 31, 2004 receives his first COLA on April 1, 2004, after one day of retirement. Some systems, including CalPERS, require retirees to be retired for a full year before they are eligible for a COLA. The Los Angeles City Safety members' plan prorates the first COLA by the number of completed months of retirement prior to the COLA effective date. We recommend that County law follow the City model.

13. **Allow reevaluation of disability up to age 60.** SCDR often must be granted in cases where the applicant's medical condition may improve. Currently, LACERA may only reevaluate the applicant's medical condition up to age 55. Raising that age limit to 60 will result in more cases in which the medical condition improves to the point where the applicant is no longer disabled, and it will allow more members to be reexamined, particularly when they subsequently become employed in a similar capacity.

14. **Require retirement from a reciprocal plan.** One of the SCDRs we reviewed (claim number 18) had 15 years of PERS credit, and his last five years of employment was with the County. Reciprocity was established. The individual became eligible for a SCDR, and the County is paying the full 50% benefit. There are no offsets to the County payment for the 15 years of PERS credited service. Instead, this individual took a refund of his contributions from PERS, thus forfeiting his PERS pension.

Had this individual elected to retire from PERS, his County pension would have been reduced by the exact amount of the PERS payment (PERS plus County = 50% of pay



## Recommendations for Further Study of SCDR

for a SCDR), but retirees have no incentive to retire under PERS if they are guaranteed 50% of pay plus a refund of their PERS contributions.

We recommend that the County require those eligible for reciprocity to retire from the reciprocal plan. Or, if they take a refund, this payment must be made to the County as a condition of receiving their SCDR.

15. **Cap benefits at 50% of pay.** Cap SCDR benefits at 50% of final compensation and require the member to choose between a SCDR at 50% or a service retirement benefit if that would provide a higher monthly amount.

The City of Los Angeles provides for a SCDR benefit based on severity, with the benefit amount ranging between 30% and 90% of final pay. If the member's disability benefit is less than his accrued service retirement benefit, the member must choose between the non-taxable SCDR and the taxable service retirement benefit. This provision has reduced the number of SCDR applications by members who are eligible for a normal retirement benefit.

# Attachment 1

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## Senate Bill 877 Speier

Article 10 of the 1937 Act covers Service Connected Disability Retirements. The following is an excerpt from Article 10.

Section 31720. Any member permanently incapacitated for the performance of duty shall be retired for disability regardless of age if, and only if:

(a) the member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment *contributes substantially* to such incapacity...

As interpreted by the courts, the term "*substantially*" does nothing to limit the approval process. The finding of just about any cause of disability, no matter how minor in relation to the job, generally results in approval of the application.

The Act was amended to make it *easier* to get awarded an SCDR. The following sections were added to the '37 Act.

Section 31720.5 adds:

...and develops heart trouble, such heart trouble...shall be presumed to arise out of...employment...

Section 31720.6 adds:

...and develops cancer, such cancer ...shall be presumed to arise out of ...employment...

Section 31720.7 adds:

...develops a blood-borne infectious disease...the disease...shall be presumed to arise out of...employment...

The Speier amendment proposes to strengthen the causation standard by replacing "contributes substantially" and requiring "clear and convincing evidence that the employment is a substantial cause of the incapacity."

## Attachment 2

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### **DROP (Deferred Retirement Option Plan)**

Many other entities in California have adopted a DROP. Most notable are the Cities of Los Angeles and San Diego, along with the Los Angeles County Metropolitan Transportation Authority.

A DROP works as follows.

An employee elects a regular service retirement. He fills out all necessary documents, the pension amount is calculated, and for retirement plan benefit accrual purposes only, he retires. He no longer earns additional retirement service credit while participating in DROP. But instead of leaving employment, he continues to work, earn his regular pay, and participate in all other benefit programs, and all other conditions of employment apply.

Instead of paying the regular "monthly pension" to the retiree, all funds are credited to a tax-deferred account for the exclusive benefit of the retiree. The account is credited with a stipulated interest rate. The DROP participant is permitted to remain employed for up to a predetermined maximum number of years. When the participant actually leaves employment, all funds in the DROP account are paid to him (or he can roll it over into an IRA), and he begins to receive his regular monthly pension benefit.

The retiree and the employer both benefit from this arrangement.

1. The employer gets to keep a trained and valuable employee for several additional years.
2. Inasmuch as the employer would have had to continue paying for medical insurance for both the retiree and the new employee hired to replace him, the employer would save on health insurance costs for every participant in DROP.
3. DROP participants can expect to receive a substantial lump sum payment when they leave active employment.
4. DROP participants are much less likely to apply for a SCDR. (The City of Los Angeles allows DROP participants to apply for a SCDR. If the SCDR is approved,

## Attachment 2

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the applicant receives "service credit" toward the calculation of the SCDR benefit for the period of participation in the DROP; however, he forfeits his DROP account. Because of this forfeiture rule, it is highly unlikely that any participant in DROP would elect a SCDR).

To implement a DROP, the '37 Act must be amended.

Note: The City of Dallas implemented a DROP. In CY 2003, it had 117 service retirements and only one disability retirement. The implementation of the DROP is directly credited with reducing the incidence of disability retirements.

## Attachment 3

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### The Cost to the County of SCDR

Information on the cost to the County of safety employees participating in LACERA ("members") is presented in the June 30, 2004 actuarial valuation report. The components of this cost are:

- Present Value of Benefits (the amount needed today to pay all benefits earned and expected to be earned by current members, including active, retired, and terminated vested members),
- Present Value of Future Member Contributions (the discounted value of expected contributions by current active employees),
- Present Value of Future County Normal Costs (the "normal cost" is the cost of benefits earned in each plan year; the "present value of future County normal costs" is the discounted value of the County's normal costs, i.e., the amount that, in combination with the active members' future contributions, pay for the benefits earned in each future year of service), and
- Unfunded Actuarial Accrued Liability (the present value of benefits less plan assets, future employee contributions and County normal costs, i.e., the value of benefits earned to date less plan assets).

For safety employees, the amounts are as follows (in millions of dollars):

Present Value of Benefits	
Retirees and Beneficiaries	\$6,575
Terminated Vested	59
Active Members	<u>6,086</u>
<b>Total</b>	<b>\$12,720</b>
Valuation Assets	-8,652
Present Value of Future Active Member Contributions	-837
Present Value of Future County Normal Costs	<u>-1,271</u>
<b>Unfunded Actuarial Accrued Liability</b>	<b>\$1,960</b>

## Attachment 3

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The County's current annual contribution (normal cost plus amortization of the unfunded actuarial accrued liability) for safety employees is \$237 million.

Several SCDR-related costs (some included in the above amounts, others not yet recognized) can be approximated. They include:

- 100% surviving spouse benefit – this represents \$150 million of the Present Value of Benefits for current SCD Retirees and Beneficiaries and the Present Value of Benefits for Active Members who are projected to receive a SCDR, and \$15 million of the annual contribution to LACERA.
- “Spiking” – this is the practice of receiving pay for unused vacation, sick leave and other one-time payments of pensionable compensation in the year before retirement to increase the retirement benefit. This was evident in the 35 cases we reviewed, which revealed that the final year's compensation, on average, was approximately 6% higher than the last day's pay rate. If this difference is applied to all current retired Safety members and beneficiaries, this results in \$370 million already recognized in the Present Value of Benefits, and \$20 million in the annual contribution to LACERA

Milliman, LACERA's actuary, reviewed this analysis and informed us that the valuation data it receives each year includes any unused vacation and sick leave pay that was paid in cash during the year, and is used to project pensionable earnings at retirement. Milliman believes that the annual actuarial valuation for active participants takes the effect of “spiking” into consideration, i.e., the 6% difference we observed between final pay rate and the actual compensation received in the 12 months prior to retirement is already recognized in the valuation.

- Low assumed disability retirement rates –on the basis of the current ratio of SDCRs to service retirements, we believe that the disability retirement rates used in the valuation underestimate the number of future SDCRs and consequently underestimate the Present Value of Benefits for Active Members attributable to the increased survivor benefit. The actuarial assumptions project that 40% of safety members retiring at or after age 40 will retire with a SCD benefit. In fact, approximately 60% of retirees are receiving SCDR benefits. We estimate that the

## Attachment 3

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Present Value of Benefits may be understated by as much as \$20 million. This would add approximately \$1 million to the County's annual contribution to LACERA.

In determining the extent to which service-connected disability retirement rate assumptions might be understated, we looked at the aggregate number of retirements in each category as of June 30, 2004. Milliman believes that this analysis overstates current expectations as the percent of members retiring with a SCDR has been declining recently and that the current assumptions reflect recent experience. Buck did not have year-by-year statistics to verify that. Therefore, our unrecognized cost estimate may be overstated.

# Attachment 4

## California 37 Act Counties Retirement Data Safety Members

County	Retired as of 6/30/04		Retired during FY 2003-04	
	Service	Disability	Service	Disability
Los Angeles	3,060 38.6%	4,870 61.4%	175 46.7%	200 53.3%
Alameda(1)	591	148	*	*
Contra Costa(1)	668	393	76	18
Fresno	401	82	22	11
Imperial	45	40	3	2
Kern	627	354	51	24
Marin(3)	130	95	**	**
Mendocino	666	104	75	1
Merced	30	47	3	4
Orange(1)	697	281	201	58
Sacramento	637	169	94	10
San Bernardino(3)	422	548	173	8
San Diego	726	487	92	38
San Joaquin(2)	305	136	145	10
San Mateo	194	81	*	*
Santa Barbara	345	102	**	**
Sonoma(1)	176	160	16	26
Stanislaus	205	94	21	8
Tulare	139	75	100	9
Ventura	385	299	38	12
Total (not including Los Angeles)	7,389 66.7%	3,695 33.3%	1,110 82.3%	239 17.7%

(1) Data reported as of 12/31/04

(2) Data reported as of 12/31/02

(3) Data reported as of 6/30/05

\* County reported that data is not available on a fiscal year basis

\*\* Data not provided (did not respond to survey, emails or numerous phone calls)



## Attachment 5

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### Past SCDR Studies and Reform Proposals

#### Selected Bibliography of Sources Used in Research

##### County Letters (See Appendix 1)

Letter from Richard B. Dixon, County of Los Angeles Chief Administrative Officer to Each Supervisor. Subject: Disability Retirement Study – Board Order of October 6, 1987.

Letter from Mark J. Saladino, County of Los Angeles Treasurer and Tax Collector to David E. Janssen, Chief Administrative Officer; Lloyd W. Pellman, County Counsel; and Michael J. Henry, Director of Personnel. Subject: Disability Retirement. December 27, 1999.

Letter from David E. Janssen to Supervisors Molina, Antonovich, Brathwaite Burke, Yaroslavsky, and Knabe. Subject: Report on Service-Connected Disability Retirement Benefits. May 5, 2000. Includes attachment entitled Report on Issues Raised in November 16, 1999 Board Order.

Letter from Lloyd W. Pellman to Supervisors Molina, Antonovich, Brathwaite Burke, Yaroslavsky, and Knabe. Subject: Safety Employee Disability Retirement. May 15, 2000.

Letter from Lloyd W. Pellman to Supervisors Molina, Antonovich, Brathwaite Burke, Yaroslavsky, and Knabe. Subject: Negotiability of Proposed Changes to Disability Retirement Statute. May 17, 2000.

Letter from J. Tyler McCauley, County of Los Angeles Auditor-Controller, to Supervisors Molina, Antonovich, Brathwaite Burke, Yaroslavsky, and Knabe. Subject: Safety Employees – Review of Service Connected Disability Retirements. November 28, 2000.

Letter from P. Michael Freeman, County of Los Angeles Fire Chief, Forester, and Fire Warden to Supervisors Molina, Antonovich, Brathwaite Burke, Yaroslavsky, and Knabe. Subject: Auditor-Controller's Review of Service-Connected Disability Retirements. January 23, 2001.

Letter from Stephen R. Morris, County of Los Angeles Principal Deputy County Counsel, to Cathy O'Brien, Chief Administrative Office. Subject: Reinstatement Required by County Employees Retirement Law of 1937. May 24, 2004.

## Attachment 5

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### Reports

Report to the County of Los Angeles Auditor-Controller from KPMG Peat Marwick.  
Subject: LACERA Disability Claims Retirement Study, December 14, 2001.

### Newspaper Articles (See Appendix 2)

"Debs says Ward Caused Job Stress, Gets Disability Pay," by Joyce Peterson. *Green Sheet*, April 3, 1977.

"Busch's Widow Will Seek Higher Pension," by Richard Bergholz. *Los Angeles Times*, May 13, 1977.

"County Grand Jury Urges Disability Pension Reforms," by Bill Farr. *Los Angeles Times*, June 23, 1978.

"Ex-Assessor Watson Wins Disability Benefits Case," by Victoria Merina. *Los Angeles Times*, February 2, 1980.

"Pension Loophole Grows," by Troy Anderson. *Daily News*, November 14, 1999.

"L.A. County Relaxes Standard for Disability Related to Work," by Troy Anderson. *Daily Bulletin*, November 15, 1999.

# Attachment 6

## SCDR Data Review

Number	Dept	DEPT Code	Plan	Safety Gen	Date of Birth	Hire Date	Last day Worked	Date of Application	Date approved by LACERA
1	PROB	640			12/19/1950	1/22/1993	12/28/2001	6/17/2003	DENIED*
2	FIRE	390	A	S	8/16/1948	1/9/1969	3/17/2003	1/20/2004	10/6/2004
3	FIRE	390	A	S	8/2/1945	7/1/1971	4/15/2003	6/15/1993	1/7/2004
4	LASD	770	B	S	8/7/1963	2/23/1990	6/2/2000	10/21/2000	4/4/2001
5	DA	370	A	S	4/12/1949	8/1/1972	9/27/2002	1/30/2004	9/1/2004
6	FIRE	390	A	S	9/16/1949	4/5/1973	2/26/2004	4/22/2005	12/7/2005
7	LASD	770	A	S	8/9/1947	2/1/1973	10/11/2002	8/20/2003	2/4/2004
8	FIRE	390	A	S	11/7/1947	11/26/1973	9/15/2001	6/14/2003	4/4/2004
9	FIRE	390	A	S	3/10/1948	1/1/1976	5/8/2003	9/10/2003	3/3/2004
10	PROB	640	A	G	10/22/1947	7/1/1970	6/11/2001	10/17/2003	10/6/2004
11	FIRE	390	A	S	4/22/1947	9/2/1969	8/3/2002	7/1/2003	1/24/2005
12	FIRE	390	A	S	4/25/1946	5/5/1969	12/5/2002	3/24/2004	11/23/2004
13	PROB	640	A	G	12/27/1944	6/1/1967	11/15/2002	7/22/2003	1/7/2004
14	PROB	640	D	G	9/13/1966	7/2/1998	2/7/2004	9/2/2003	7/7/2004
15	FIRE	390	B	S	8/14/1959	12/15/1982	1/9/2003	6/30/2003	1/7/2004
16	PROB	640	A	G	8/26/1942	7/1/1966	8/11/2001	4/25/2002	5/7/2003
17	OPS	101	D	G	1/7/1956	8/30/1996	7/17/2001	9/10/2002	6/4/2003
18	DA	370	B	S	10/3/1958	2/8/1999	8/6/2003	8/29/2003	4/7/2004
19	LASD	770	B	S	12/15/1960	10/7/1986	3/10/2003	8/18/2003	1/7/2004
20	FIRE	390	A	S	9/1/1976	9/1/1976	8/15/1998	6/20/1999	2/2/2000
21	OPS	101	A	G	10/9/1948	5/12/1972	5/6/2003	12/23/2003	8/4/2004
22	PROB	640	A	G	7/23/1946	10/1/1971	11/7/2001	12/2/2003	9/1/2004
23	LASD	N/A	B	S	10/27/1958	1/17/1992	3/5/2002	2/20/2003	8/6/2003
24	FIRE	390	A	S	4/4/1940	4/28/1967	3/30/2000	2/6/2003	7/7/2004
25	LASD	770	A	S	9/4/1948	1/10/1972	12/20/2002	10/6/2003	6/2/2004
26	DA	N/A	A	S	1/28/1948	9/15/1972	11/6/2003	3/11/2004	10/6/2004
27	PROB	640	A	G	1/9/1946	11/1/1975	6/15/2003	11/26/2003	5/10/2004
28	LASD	770	B	S	8/23/1954	11/17/1989	4/10/2003	11/24/2004	6/2/2004
29	FIRE	N/A	A	S	7/17/1942	7/1/1966	7/16/2002	6/6/2003	5/10/2004
30	OPS	N/A	D	G	2/1/1942	10/11/1994	5/30/2002	3/7/2003	3/3/2004
31	LASD	770	A	S	4/3/1948	2/1/1972	10/30/2002	6/20/2003	2/4/2004
32	FIRE	390	A	S	6/24/1943	4/1/1973	2/28/2004	8/25/2003	3/3/2004
33	LASD	770	A	S	3/18/1947	1/1/1970	12/15/2000	2/23/2001	5/10/2004
34	OPS	101	A	G	1/21/1948	11/1/1969	3/1/2000	10/22/2002	10/2/2003
35	FIRE	390	A	S	7/8/1951	10/31/2000	5/8/2003	3/4/2004	8/4/2004

\* data not entered for denied claim

# Attachment 6

## SCDR Data Review

Number	RET. DATE	Ret. Hearing Date	Service Credit	Age At Retirement	SCDR Pension Benefit Awarded	Service Pension Benefit Accrued
1	1/7/2004	1/7/2004	10 3/4	52	-	-
2	10/6/2004	10/6/2004	35 5/6	56	\$9,277.39	n/a
3	3/29/2004	1/7/2004	32 1/4	57	\$11,229.33	n/a
4	4/1/2001	5/1/2001	11 1/2	37	\$3,141.32	n/a
5	3/14/2004	9/1/2004	31 7/12	55	\$6,800.57	\$6,800.57
6	12/30/2004	12/7/2004	31 2/3	55	\$8,474.57	n/a
7	6/16/2003	6/16/2003	30 1/3	56	\$5,330.53	\$5,073.79
8	3/31/2003	8/4/2004	31 11/12	56	\$6,764.30	\$6,764.36
9	3/16/2004	3/3/2004	28	55	\$7,950.59	n/a
10	10/26/2004	8/4/2004	33 5/12	56	\$4,374.39	n/a
11	8/5/2003	1/7/2004	33 11/12	56	\$11,136.34	\$10,955.98
12	3/29/2004	11/3/2004	34 5/6	58	\$9,226.67	\$9,226.67
13	3/28/2003	1/7/2004	35 3/4	59	\$5,081.86	\$5,081.86
14	1/18/2005	1/18/2005	5 1/2	37	\$2,048.09	n/a
15	3/16/2004	3/3/2004	20 11/12	44	\$3,982.45	n/a
16	3/21/2002	5/7/2003	35 7/12	60	\$5,107.86	\$5,107.85
17	9/16/2002	6/4/2003	4 1/4	47	\$1,243.50	n/a
18	6/30/2004	4/7/2004	5	45	\$3,508.72	n/a
19	3/9/2004	1/7/2004	17 1/4	43	\$3,204.19	n/a
20	11/6/1999	2/4/2004	23	52	\$2,971.04	\$2,551.19
21	3/31/2005	8/4/2004	32	55	\$3,912.32	n/a
22	3/31/2004	3/31/2004	32 1/6	58	\$4,244.04	\$4,244.04
23	8/11/2003	n/a	11 1/6	44	\$2,891.97	n/a
24	3/3/2004	3/31/2000	32 11/12	63	\$7,754.71	\$7,754.74
25	3/15/2004	3/15/2004	32 1/4	55	\$5,698.68	\$5,698.68
26	11/5/2004	n/a	31 5/6	55	\$7,341.64	n/a
27	1/10/2005	1/10/2005	28 1/4	58	\$4,041.00	n/a
28	6/1/2004	6/2/2004	14 1/3	49	\$2,997.16	n/a
29	6/3/2003	n/a	36	61	\$7,722.08	\$5,218.85
30	5/31/2003	n/a	8 7/12	62	\$2,397.87	n/a
31	9/5/2003	9/5/2003	31 7/12	55	\$6,917.61	\$6,584.44
32	3/24/2003	3/24/2003	29 11/12	60	\$8,079.29	\$7,843.97
33	7/12/2002	7/12/2002	32 1/2	57	\$5,257.63	\$5,561.57
34	3/11/2002	10/2/2003	32 1/3	55	\$4,202.56	\$4,735.82
35	8/5/2004	1/0/1900	3 5/6	53	\$9,841.73	n/a
Average			25.7	53.6	\$5,710.41	

n/a = data not available

# Attachment 6

## SCDR Data Review

Number	Average Monthly Pay over Last 12 Months	Monthly Salary on Last Pay Period	Monthly - Three Year Average Pay	Enough Med to Award SCDR <sup>1</sup>	Enough Med to Award NSD <sup>2*</sup>	What if SCDR Standard Increased to 50% Service Connected
1				No	No	No
2	\$9,528.40	\$8,278.69	\$8,817.29	Yes	*	No
3	\$13,121.65	\$10,576.35	\$11,791.47	Yes	*	No
4	\$6,290.22	\$6,131.18	\$5,804.20	Yes	*	Yes
5	\$7,878.89	\$7,511.45	\$7,769.71	Yes	*	No
6	\$10,037.20	\$7,986.10	\$9,013.63	Yes	*	Yes
7	\$6,384.87	\$6,102.09	\$6,301.58	Yes	*	Yes
8	\$8,027.13	\$6,901.00	\$7,198.08	Yes	*	No
9	\$9,711.54	\$8,278.69	\$8,893.15	Yes	*	No
10	\$5,738.75	\$5,643.09	\$5,695.81	Yes	*	No
11	\$11,615.78	\$11,463.25	\$11,346.68	Yes	*	No
12	\$9,851.60	\$8,440.29	\$9,074.41	Yes	*	No
13	\$6,173.55	\$6,231.91	\$6,012.05	Yes	*	No
14	\$4,096.18	\$4,096.18	\$4,056.03	Yes	*	Yes
15	\$7,964.89	\$7,657.45	\$7,881.78	Yes	*	Yes
16	\$6,029.22	\$5,538.00	\$5,731.47	Yes	*	No
17	\$2,487.00	\$2,560.64	\$2,455.47	Yes	*	No
18	\$6,879.83	\$6,929.45	\$6,473.53	Yes	*	Yes
19	\$6,408.38	\$6,102.09	\$6,277.65	Yes	*	Yes
20	\$5,942.07	\$5,871.18	\$5,524.83	Yes	*	No
21	\$5,731.85	\$5,669.82	\$5,713.51	Yes	*	No
22	\$5,970.43	\$5,643.09	\$5,845.29	No	Yes	No
23	\$5,559.33	\$5,446.00	\$5,485.98	No	No	No
24	\$8,018.27	\$7,742.46	\$7,297.27	No	Yes	No
25	\$6,692.11	\$6,419.73	\$6,538.58	Yes	*	No
26	\$8,458.43	\$8,136.73	\$8,423.95	Yes	*	No
27	\$5,743.09	\$5,643.09	\$5,691.57	Yes	*	Yes
28	\$5,876.78	\$5,793.45	\$5,833.53	Yes	*	No
29	\$8,187.85	\$8,121.90	\$7,943.71	No	No	No
30	\$4,795.73	\$4,786.91	\$4,746.92	No	Yes	No
31	\$7,957.93	\$7,625.73	\$7,726.22	No	Yes	no
32	\$9,405.74	\$7,892.00	\$8,793.58	No	No	No
33	\$6,175.12	\$5,975.91	\$5,954.29	**	**	**
34	\$7,106.13	\$7,355.55	\$7,181.33	No	Yes	No
35	\$10,626.78	\$9,901.62	\$10,175.75	Yes	*	Yes
Average	\$7,366.84	\$6,895.68	\$7,043.24			

<sup>1</sup>Medical information in file was not sufficient to determine service-connected disability.

<sup>2</sup>Medical information in file was not sufficient to determine non-service-connected disability.

\* No entry required if "Yes" appears in previous column

\*\* Cannot determine from data available

# Attachment 6

Number	Payments Received Prior to SCDR				
	4850 payments	WC TD	WC Other	WC Lump	Total
1	\$47,095	\$0	\$8,486	\$41,650	\$97,231
2	\$160,286	\$0	\$13,150	\$0	\$173,436
3	\$112,755	\$0	\$11,256	\$0	\$124,011
4	\$66,116	\$7,630	\$14,987	\$29,750	\$118,483
5	\$108,000	\$14,448	\$30,390	\$0	\$152,838
6	\$78,061	\$0	\$0	\$0	\$78,061
7	\$47,587	\$0	\$2,590	\$39,270	\$89,447
8	\$95,335	\$0	\$2,935	\$0	\$98,270
9	\$100,337	\$0	\$0	\$0	\$100,337
10	\$63,430	\$28,624	\$5,763	\$0	\$97,817
11	\$127,065	\$0	\$0	\$0	\$127,065
12	\$138,435	\$2,040	\$18,533	\$0	\$159,008
13	\$0	\$0	\$30,482	\$0	\$30,482
14	\$20,348	\$0	\$0	\$0	\$20,348
15	\$87,737	\$0	\$0	\$52,063	\$139,800
16	\$40,319	\$350	\$18,845	\$63,243	\$122,757
17	\$0	\$30,300	\$3,837	\$0	\$34,137
18	\$79,492	\$0	\$6,045	\$50,736	\$136,273
19	\$138,166	\$0	\$47,488	\$0	\$185,654
20	\$64,868	\$0	\$18,908	\$62,943	\$146,719
21	\$63,216	\$0	\$9,012	\$44,030	\$116,258
22	\$60,311	\$39,674	\$18,200	\$0	\$118,185
23	\$62,201	\$5,552	\$9,348	\$13,680	\$90,781
24	\$0	\$0	\$18,631	\$194,246	\$212,877
25	\$74,013	\$0	\$0	\$38,080	\$112,093
26	\$161,539	\$0	\$10	\$0	\$161,549
27	\$64,789	\$0	\$5,598	\$0	\$70,387
28	\$66,389	\$688	\$35,510	\$0	\$102,587
29	\$51,960	\$0	\$45,737	\$102,235	\$199,932
30	\$52,924	\$30,909	\$19,874	\$0	\$103,707
31	\$0	\$0	\$0	\$0	\$0
32	\$107,132	\$0	\$23,080	\$129,131	\$259,343
33	\$0	\$0	\$17,150	\$30,940	\$48,090
34	\$0	\$0	\$0	\$0	\$0
35	\$113,561	\$0	\$0	\$0	\$113,561
Total	\$2,453,469	\$160,215	\$435,845	\$891,997	\$3,941,525

# Appendix 1



# COUNTY OF LOS ANGELES CHIEF ADMINISTRATIVE OFFICE

713 HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012  
974-1101

MEMBERS OF THE BOARD

PETER F. SCHABARU

KENNETH HAN

EDMUND D. EDELMAN

DEANE DARR

MICHAEL D. ANTONOVIC

RICHARD B. DIXON  
CHIEF ADMINISTRATIVE OFFICER

May 26, 1988

To: Each Supervisor

From: Richard B. Dixon  
Chief Administrative Officer

Subject: DISABILITY RETIREMENT STUDY - BOARD ORDER OF  
OCTOBER 6, 1987

On October 6, 1987, your Board directed that a review be made of disability retirements and that possible options be developed to reduce the apparent high rate of disability experience in Los Angeles County. Pursuant to this order, we have met with the County Counsel, Retirement Administrator, and members of the Retirement Board to discuss the issue and explore alternative solutions. ~~In addition, we participated in joint LACERA and CSAC Ad Hoc Committee meetings convened to pursue legislative reform of disability retirement.~~

In summary our findings as detailed in the attachment are:

1. The proportion of disability retirements of all retirements in all counties covered by the County Employees Retirement Law of 1937 ('37 Act) is related to the percentage safety employees represent of the total workforce of each county.
2. Since Los Angeles County has significantly more safety employees than the other '37 Act counties, it may be subject to greater exposure to disabling injury.
3. Safety employees are unique because their duties expose them to more than ordinary risks. For the public's protection, the disability retirement program is designed to recognize the need for and provide a mechanism to replace an incapacitated safety employee, without hardship or prejudice, with a more physically qualified individual.
4. The percentage of disability retirements is related to the definition of disability.



Each Supervisor  
May 26, 1988  
Page 2

5. The higher level of the service-connected disability retirement benefit structure may act as an incentive for those who are seeking retirement.
6. LACERA is pursuing administrative controls to protect against the inadvertent award of unjustified disability retirements.
7. A significant reduction in the award of disability retirements in Los Angeles County will require legislative change.

We will continue to pursue improvements to the disability retirement process with LACERA and report our activities to your Board. Since changes which impact employee benefits are subject to the meet and confer process, I propose that we meet in closed session if you wish to discuss these matters further at this time.

RBD:DRD  
BC:rl  
7:ret.1

Attachment

~~cc: County Counsel~~  
Treasurer-Tax Collector  
Each Member of Board of Retirement  
Retirement Administrator

## ATTACHMENT

### 1. LACERA Disability Retirement Policies and Procedures Were Reviewed and Options for Improvement Were Discussed.

Staff of the Chief Administrative Office and County Counsel met with the Retirement Administrator and members of the Retirement Board and discussed possible options for reducing disability retirement experience. It was learned that:

- In the past 24 months, LACERA has diligently screened hearing referees and doctors utilized by the Board in order to achieve objective disability appeals rulings and medical evaluations. Positive results have come from these actions and will increase as the makeup of these two groups change.
- LACERA's safety membership and safety disability retirements have considerable impact on the total LACERA disability retirement system. (See Attached Charts I and II for more information about disability retirement.)
  - Los Angeles County has a much larger complement of active safety retirement members (more than 6 times the next largest, Orange) than other counties covered by the County Employees Retirement Law of 1937 ('37 Act). Los Angeles County safety members work in an urban environment where they are exposed to a greater variety of hazardous duty than exists in most other '37 Act counties. This may result in more disabling injuries.
  - In 1985-86, 53.6% of LACERA's safety retirements were disability retired while 15.2% of general member retirements were disability retired. (See Charts I and II.)
  - More than 94% of total LACERA safety disability retirements were service-connected, and 60% of LACERA's general member disability retirements were service-connected.
  - More than one in three of all LACERA disability retirements were safety members.
  - Safety disability retirements heavily impact all disability retirements in several other '37 Act counties.

Discussion included the possibility of:

- Implementing an automated data base to monitor disability retirement relative to types of illness or injury, cause, age, service, etc. Such information would be useful in making future policy determinations based on more than 5700 disability retirees and over 400 annual additions to this total. The Retirement Administrator expects this capability to be available in a new LACERA data processing system currently being developed for 1989 implementation.
- Reducing the incentive for pursuing service-connected disability retirement (SCDR) by seeking a federal Internal Revenue Service (IRS) rule change to eliminate any tax-free status of SCDR allowances.
- Lessening the incentive for seeking service-connected disability retirement by making the spousal survivor benefits the same for all retirees. Presently, if the LACERA member was in Plan A, B, C or D, the surviving spouse may receive 100% of SCDR or 60% of any other retirement allowance. LACERA has contracted for a special actuarial study to determine a single, spousal survivor amount that would not increase current retirement costs.
- ~~- Amending the Board of Retirement hearing rules to facilitate a more aggressive defense of disability retirement cases. LACERA has under consideration and is favorably disposed toward a County Counsel proposal that would allow depositions to be taken from witnesses and doctors in order to determine the basis for an appeal of a Board decision.~~
- Restructuring Plan D disability protection so that Long Term Disability (LTD) is the exclusive coverage for all future general member employees.

2. Disability Retirement Policies and Procedures in Other Counties Were Reviewed.

Together with County Counsel, my staff contacted nine of the largest counties covered by the '37 Act. Among those contacted were counties that appeared to be successful in reducing the percentage of disability retirements. Surprisingly, most of these counties, when given this data, were not aware that any reductions had occurred, and could only speculate about their apparent success. However, Contra Costa County claimed an improved experience based on a legislated change which provides a more rigid disability standard ("unable permanently to engage in any substantial gainful employment"), and raising their employee service requirement to ten years for nonservice-connected disability retirement (NSCDR). These measures were effected only in Contra Costa County at the time a second General Member Tier was established.

Additional information learned from these counties was as follows:

- Two counties have retained outside attorneys who specialize in the disability retirement arena.
- ~~All acknowledge difficulty in controlling safety disability retirement.~~
- San Bernardino reports success in having the "employer's doctor" testify at a disability appeals hearing. County Counsel believes this idea has value when applied on a selective basis.
- San Diego's safety retirement membership is composed of Sheriff's and Marshal's sworn employees only. All firefighter personnel are in the City of San Diego.
- Alameda safety retirement membership is composed of Sheriff's employees who are mainly bailiff and custody personnel. Firefighters are in County fire protection districts not covered under Alameda County's '37 Act provisions.

3. Ultimately, Plan E Participation will Reduce General Member Disability Retirements and Thus Reduce The Percentage of All Disability Retirements. However, Plan D Membership also will continue to grow.

Plan E has no disability retirement provision and has already had an impact on County disability retirement. It is the largest of any of the LACERA retirement plans. Since implementation in 1982, Plan E membership has increased from an initial enrollment of 30% to over 43% of the general members. About one of every two new general member employees elect Plan E. By 1992, assuming the average rate of change in general plan memberships continues as took place in the first five years, Plan E participation should increase to over 58% of the General Members.

Plan D with a disability retirement provision has 18% of the general member enrollment. By 1992, assuming the change in general plan membership continues as was the case in the first five years of Plan E, Plan D, participation should increase to over 22% of general members, and will become the second largest general member plan.

According to the latest LACERA actuarial study (as of June 1986), the average age and length of service for active general members are as follows:

	<u>Average Age</u>	<u>Average Service</u>	<u>Retirees As A Percent of Plan Active and Retired Members</u>
Plan A	48.3	17.0	50.1%
Plan B	43.2	7.9	2.4%
Plan C	42.8	7.1	2.9%
Plan D	38.2	3.1	0.5%
Plan E	38.3	7.2	0.4%

The ultimate effect of Plan E is several years away and the availability of Plan D to new employees will continue to limit Plan E's effect on disability retirement.

4. LACERA and The County Supervisors Association of California (CSAC) are Pursuing Legislative Reform of Disability Retirement.

Staff participated in two joint LACERA and CSAC Ad Hoc Committee meetings that were Co-chaired by CSAC's Allan Burdick and Robert Kennard, Retirement Board Chairman, and composed of LACERA Retirement Board members, LACERA staff, and Retirement Administrators from several other '37 Act counties. Some ideas developed in these meetings were of particular interest:

- A more precise definition for SCDR requiring permanent incapacity caused by a specific, job related, medically identifiable, injury or disease while the employee is performing assigned County duties. Presently, SCDR is defined as "incapacity (that) is the result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity."
- A benefit that is a single, fixed percentage of final compensation for SCDR and NSCDR, coordinated with any Worker's Compensation dollar off-set and coupled with a single spousal benefit, that is cost effective and sufficient to make the disability benefit acceptable to all concerned.
- Relative to stress related SCDR, elimination of normal, expectable variants of the job and workplace as qualifying an employee for SCDR including:
  - terminations, discipline, demotions, performance evaluations, transfers, etc.
  - deadlines and workloads normal to the job.
  - cumulative strain of normal job.
- Require service retirement in lieu of SCDR if the retirement allowance is greater than 50% of final compensation.

Endorsement of these or other ideas should be reserved until we see the recommendations of the Ad Hoc Committee.

5. Return to Work and Vocational Rehabilitation Programs Might be Utilized More Extensively.

Two measures in the '37 Act provide alternatives to nonservice and service-connected disability retirements.

- If an incapacitated employee eligible for NSCDR is medically capable of and accepts alternative County employment, no NSCDR allowance is paid the employee. LACERA must supplement the employee's salary if the alternate position pays less than the original.
- An incapacitated employee unable to work at his/her job, eligible for SCDR and medically able to perform other duties may be referred by the Board to an appropriate County agency for a suitable rehabilitation program for other employment in the County. The SCDR allowance is payable only until the employee assumes the new assignment, but LACERA must supplement the new salary if it is less than the original salary.

Members of the Retirement Board report resistance from County departments and disabled employees to alternative job placement even with these provisions. Information from the LACERA data base currently under development will be useful in determining if enhanced job placement and vocational rehabilitation alternatives to disability retirement are viable.

1/5/88  
7:5d

\*Data extracted from State Controller's Report, "Annual Report of Financial Transactions, Public Retirement Systems, Calendar Year 1985/Fiscal Year 1985-86"  
 \*\*Fresno reported no Disability Retirements.  
 \*\*\*Marin, Stanislaus and Merced do not break out their Safety Retirement statistics from General Retirement statistics



**\*GENERAL MEMBER RETIREMENT COMPARISON  
1937 ACT COUNTIES  
FY 1985-86**

1	2	3	4	5	6	7	8
County	Active General Retirement Members	Percent Active General Retirement Membership	Service Retirements	Disability Retirements	Total General Member Retirements	Percent Disability Retired	Percent Safety Retired
			Service Retirements	Non-Service Connected	Combined	Service Connected	Disability Retired of Total
			Connected	Retired	Retired	Retired	Retired
Los Angeles	58148	86.3%	19569	2123	23072	15.2%	9.2%
Alameda	7075	89.9%	3362	58	3624	7.2%	1.6%
Alameda	5491	83.9%	2010	286	2297	12.5%	12.5%
Alameda	5273	91.8%	1758	0	1758	0.0%	0.0%
Alameda	758	85.5%	284	13	316	10.1%	4.1%
Alameda	4834	82.9%	1644	193	1980	17.0%	9.7%
Alameda	1550	76.9%	727	93	854	14.9%	10.8%
Alameda	679	87.2%	284	20	347	18.2%	5.8%
Alameda	1873	100.0%	455	45	540	15.7%	8.3%
Alameda	12352	89.3%	2750	160	3114	11.7%	5.1%
Alameda	6228	85.1%	1749	114	2159	19.0%	5.3%
Alameda	8153	88.1%	2153	159	2522	14.6%	6.3%
Alameda	10463	90.4%	4025	150	4378	8.1%	3.4%
Alameda	3127	88.2%	1097	24	1209	9.3%	2.0%
Alameda	3352	90.8%	1427	33	1572	9.2%	2.1%
Alameda	2453	84.9%	959	127	1086	11.7%	11.7%
Alameda	2630	92.1%	768	75	937	18.0%	8.0%
Alameda	2245	88.9%	928	51	1047	11.4%	4.9%
Alameda	1901	86.8%	776	16	882	12.0%	1.8%
Alameda	4386	83.5%	1029	102	1263	18.5%	8.1%

\*Data extracted from State Controller's Report, "Annual Report of Financial Transactions, Public Retirement Systems, Calendar Year 1985/Fiscal Year 1985-86"

\*\*Fresno reported no Disability Retirements.

\*\*\*Marin, Stanislaus and Merced do not break out their Safety Retirement statistics from General Retirement statistics

MOTION BY SUPERVISOR SCHABARUM

OCTOBER 6, 1987

I recently received information concerning comparative statistics of various county retirement associations' disability retirement experience rates. This data was extracted from State Controller's reports between fiscal years 1978-79 and 1985-86.

It confirmed my fear that the Los Angeles County Employees Retirement Association (LACERA) is one of the worst county systems in the state when it comes to dispensing disability retirements as a percentage of all retirements. Moreover, while awards of disability retirements in most counties during the reporting period were declining as a percentage of total retirements, our trend was racing off in the opposite direction -- upward. In other words, our costs are going up, while other systems have been able to moderate costs associated with disability retirements.

To put this into perspective, for each one-percent reduction in the percentage of retirements that are service-connected retirements, LACERA could be saving approximately \$3,000,000 annually. If for example our rate dropped by three percent to its 1978-79 level, the savings could be \$8-10 million per year. Moreover, if we were ever to achieve a rate comparable to Alameda or San Diego counties, the annualized savings could be on the order of \$30,000,000.

M O R E

PS:lbc

I think there is something to be gained by a more in-depth analysis of these trends and statistics in concert with a thorough review of the efforts other counties have successfully mounted to reduce their rate of disability retirement awards.

I, THEREFORE, MOVE THAT the Board of Supervisors instruct the Chief Administrative Officer, in conjunction with the County Counsel, ~~LAC~~ to conduct a review of disability retirement policies and procedures in other counties for the purpose of identifying methods and techniques for reducing disability retirement experience rates in Los Angeles County.

Further, the CAO is directed to meet with the Board of Retirement and the Retirement Administrator to discuss options they might suggest to control LACERA's high rate of disability retirement awards. The CAO is to report back to the Board of Supervisors within 90 day.

# # #



MINUTES OF THE BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

Larry J. Monteilh, Executive Officer  
Clerk of the Board of Supervisors  
383 Hall of Administration  
Los Angeles, California 90012

Chief Administrative Officer

At its meeting held October 6, 1987, the Board took the following action:

5

Supervisor Schabarum made the following statement:

"I recently received information concerning comparative statistics of various County Retirement Association's disability retirement experience rates. This data was extracted from State Controller's reports between fiscal years 1978-79 and 1985-86.

"It confirmed my fear that the Los Angeles County Employees Retirement Association (LACERA) is one of the worst County systems in the State when it comes to dispensing disability retirements as a percentage of all retirements. Moreover, while awards of disability retirements in most counties during the reporting period were declining as a percentage of total retirements, our trend was racing off in the opposite direction -- upward. In other words, our costs are going up, while other systems have been able to moderate costs associated with disability retirements.

"To put this into perspective, for each one-percent reduction in the percentage of retirements that are service-connected retirements, LACERA could be saving approximately \$3,000,000.00 annually. If for example our rate dropped by three percent to its 1978-79 level, the savings could be \$8-10 million per year. Moreover, if we were ever to achieve a rate comparable to Alameda or San Diego counties, the annualized savings could be on the order of \$30,000,000.00.

(Continued on Page 2)

Syn. 5 (Continued)

"I think there is something to be gained by a more in-depth analysis of these trends and statistics in concert with a thorough review of the efforts other counties have successfully mounted to reduce their rate of disability retirement awards."

Therefore, on motion of Supervisor Schabarum, seconded by Supervisor Antonovich, unanimously carried (Supervisor Hahn being absent), the Board took the following actions:

1. Instructed the Chief Administrative Officer, in conjunction with the County Counsel and LACERA, to conduct a review of disability retirement policies and procedures in other counties for the purpose of identifying methods and techniques for reducing disability retirement experience rates in Los Angeles County; and
2. Instructed the Chief Administrative Officer to meet with the Board of Retirement and the Retirement Administrator to discuss options they might suggest to control LACERA's high rate of disability retirement awards and to report back to the Board within 90 days.

~~MIN3:c7.1~~

Copies distributed:

Each Supervisor

County Counsel

Auditor-Controller

# PERCENT OF DISABILITY RETIREMENTS

(Extracted from State Controller's Reports)

<u>COUNTY</u>	<u>FY 78/79</u>	<u>FY 82/83</u>	<u>FY 85/86</u>
Alameda	10.58	8.23	2.05
Contra Costa	19.2	16.2	16.1
Fresno	12.3	11.2	-
Imperial	13.0	15.1	12.6
Kern	20.8	19.5	19.7
Los Angeles	17.6	19.6	20.7
Marin	15.3	14.4	14.9
Mendocino	22.3	22.4	22.2
Merced	20.4	21.1	15.7
Orange	-	12.5	13.7
Sacramento	-	22.7	20.4
San Bernardino	23.7	21.1	18.9
<del>San Diego</del>	<del>10.6</del>	<del>10.6</del>	<del>10.4</del>
San Joaquin	14.6	15.2	11.3
San Mateo	13.1	10.7	10.0
Santa Barbara	15.6	17.3	16.9
Sonoma	22.5	23.0	21.4
Stanislaus	13.5	12.3	11.4
Tulare	17.7	15.7	13.8
Ventura	31.5	27.4	25.3



**COUNTY OF LOS ANGELES  
TREASURER AND TAX COLLECTOR**

500 WEST TEMPLE STREET  
437 KENNETH HAHN HALL OF ADMINISTRATION  
LOS ANGELES, CALIFORNIA 90012



**MARK J. SALADINO**  
TREASURER AND TAX COLLECTOR

TELEPHONE  
(213) 974-2101

TELECOPIER  
(213) 626-1812

December 27, 1999

TO:

David E. Janssen *David*  
Chief Administrative Officer

Lloyd W. Pellman *Bill*  
County Counsel

Michael J. Henry *Mike*  
Director of Personnel

FROM:

Mark J. Saladino *MSJ*  
Treasurer and Tax Collector

SUBJECT: **DISABILITY RETIREMENT**

In connection with the Board's instruction for you to review various aspects of disability retirement, I offer the following observations.

**Departmental Policy Reform**

One area within the control of the Board of Supervisors is personnel policy. The following reforms might be considered:

- Sheriff classifications such as Deputy, Sergeant, Detective, etc., should include sub-classifications to insure that the physical demands of distinct assignments are accurately reflected. For example, sworn personnel having full-time administrative assignments should not be classified as "Class 4 – Arduous." Similarly, "Class 3 – Moderate" would seem more appropriate for custody and investigative assignments. The Department should be able to make temporary administrative reassignments in emergencies, but the employee's *usual* assignment should be considered in review of disability applications.
- Departments should be required to justify any administrative reassignment into a more arduous class or sub-class. This might help prevent the use of administrative reassignment to force unwanted employees into retirement, or to bolster a favored employee's disability retirement application. At its December

meeting the Board of Retirement considered the case of a Deputy Sheriff who was reassigned to arduous duties after 25 years as a court bailiff with the Marshal's Department. There was no apparent reason for the reassignment other than a desire to get rid of the Deputy or to facilitate his disability retirement application.

- Off-duty activities should not be deemed service-connected, unless the activities are *specifically* required. Sports and weightlifting are well-known examples for Safety members, but General members are also affected. For example, an attorney who is disabled off-duty while participating in Mandatory Continuing Legal Education (MCLE) would be covered under current rules, but probably shouldn't be. Also, a mileage permittee's commute to and from home should not be deemed service-connected as it currently is. Disability insurance is available to protect against non-industrial disability, and is offered in the County cafeteria benefit plans.
- An ounce of prevention is worth a pound of cure, so the adage goes. Require reassignment into less arduous duties at a certain age or after a certain number of years in order to prevent disabilities. In arduous classes, many disabilities do not result from specific injuries but rather "continuous trauma." Clearly, 30 years of strenuous activity will wreck anyone's body. There are certain things that only the young should do, and not forever. In fact, in the safety classes we already see an implicit recognition that older employees have physical limitations, but this appears not to be addressed formally or explicitly in County or department policy.

#### Legislation

- ~~All legal presumptions should be rebuttable.~~ Presumptions of service-connection should simply shift the burden of proof, as do other presumptions. Currently, they are essentially conclusive. For example, Government Code §31720.5 could be amended by adding a sentence like "The presumption contained in this section may be rebutted by a preponderance of evidence."
- Add a provision to the 1937 Retirement Law to allow Boards of Retirement greater flexibility in determining whether an applicant is unable to perform his or her duties, rather than being bound by broad job specifications. For example, Government Code §31720 could be amended by defining "employment" as "the member's actual duties at the time of injury or, in the case of continuous trauma, the actual duties of the member's last permanent assignment."
- Disability should be apportioned between industrial and non-industrial causes. At the very least, disability benefits should be reduced by other awards (such as workers' compensation) to avoid double-dipping.
- Service-connected disability benefits should be limited to disabilities which arise out of and in the course of employment. For example, Government Code



§31720(a) could be amended to delete the phrase "and such employment contributed substantially to such incapacity." Despite the current language which requires a "substantial contribution," courts have deemed any "real and measurable" contribution to a pre-existing condition to be sufficient. In practice, any industrial exacerbation, no matter how slight, will support a service-connected disability.

- The exemption of service-connected disability benefits from income taxation should be re-evaluated. It is clear that the tax benefit encourages safety members who are retiring anyway to apply for service-connected disability (statistics bear this out). Tax exemption can be viewed as a windfall to the extent it shields income which exceeds compensation for injuries. Moreover, the tax exemption is the only additional benefit derived by a retiree whose normal pension exceeds 50% of final compensation, so it must explain the large number of applications filed by employees who have continued working (despite allegedly disabling injuries) to normal retirement age.

### Political Considerations

Several trustees, from this and other 1937 Act counties (San Mateo and Contra Costa), have expressed support for disability retirement reform. Clearly, strong opposition can be expected from police and fire unions. They helped build the current system, are well organized and well financed, and react to any discussion of modifying the system as a direct assault on core American values. Any legislative effort could be difficult, so modest legislative reforms (or County personnel reforms) might have a better chance of success. However, given the overwhelmingly positive public response to the Board's motion, this may be an issue whose time has come and no one should assume otherwise.

### Other "Pension Spiking" Issues

I have heard that departments can allow employees to sell back vacation time before terminating County service, thereby artificially inflating their final compensation by a lump sum which may now be pensionable under the *Ventura* case. Pending litigation addresses the extent to which payments for "time on the books" upon termination of service is pensionable (a similar but distinct issue).

Similarly, fire employees are apparently allowed to cash in up to 2 months' time in their final year, thereby compressing 14 months of pay into the normal 12-month averaging period for Plan A. This is on top of the effect of overtime pay on final compensation (my understanding is that a normal week for a firefighter is 56 hours, resulting in 16 hours of overtime at FLSA premium rates). Obviously, management would have to determine whether a regular 40-hour week for firefighters is feasible, but it's probably worth exploring, not only to limit pension payouts but also to reduce salary appropriations.



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MICHAEL D. ANTONOVICH  
Fifth District

May 5, 2000

To: Supervisor Gloria Molina, Chair  
Supervisor Michael D. Antonovich, Chair Pro Tem  
Supervisor Yvonne Brathwaite Burke  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe

From: David E. Janssen  
Chief Administrative Officer

**REPORT ON SERVICE-CONNECTED DISABILITY RETIREMENT BENEFITS**

On November 16, 1999, the Board instructed the Chief Administrative Officer, in conjunction with the Chief Executive Officer of the Los Angeles County Employees Retirement Association, County Counsel, and Director of Personnel, to report back on a number of issues relating to the cost of service-connected disability retirement benefits for safety employees.

The attached information addresses the specific points raised in the Board order. It also provides background information on how service-connected disability retirement benefits work and a discussion of two of the systemic changes that would be necessary, in our view, to reduce the number of claims. In this connection, we would like to emphasize the following:

- Based on experience over the past three years, approximately 53 percent of all safety member retirements are service-connected disability retirements. This rate is largely attributable to a 1937 Retirement Act job causation "test" that does not require the job to be the predominant cause of the disability. Without statutory relief in this and other parts of the program, we think it unrealistic to envision any significant reduction in this rate in the future.
- Service-connected disability retirement benefits are a "higher of" concept where the retiree receives the higher of a) the retirement benefit he or she earned based on service, and b) 50 percent of pensionable income. For approximately 80 percent of the individuals who receive a service-connected disability retirement, the earned benefit is the higher number. The major incentive for this group in seeking a service-connected disability retirement is the tax exempt status permitted by State and Federal law on the first 50 percentage points of benefit.

Each Supervisor  
May 5, 2000  
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- There is currently no actuarial information that shows the marginal cost of service-connected disability retirement benefits over and above the cost of the earned benefits in each case. Consequently, we do not know what the 53 percent disability rate really means in terms of additional County cost. LACERA staff will be pursuing the development of this information.

We would also like to emphasize that no material change to the current retirement program could be implemented without the requirement to negotiate the change with employee representatives. I will be addressing this subject with the Board in preparation for Countywide fringe benefit negotiations scheduled to begin this summer.

The Director of Personnel concurs with the recommendations contained in the attached material and the Chief Executive Officer of the Los Angeles County Employees Retirement Association concurs with the factual accuracy of the information presented. The County Counsel has provided the legal guidance necessary for the preparation of this report.

I hope this information is helpful. Please contact me or have your staff contact Patricia Swancutt at (213) 974-2486 if you have any questions or desire additional information.

DEJ:SMD  
PHS:WL:pb

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#### Attachment

c: Executive Officer, Board of Supervisors  
County Counsel  
Director of Personnel  
District Attorney  
Fire Chief  
Sheriff  
Executive Officer, LACERA

## **SERVICE-CONNECTED DISABILITY RETIREMENT FOR SAFETY EMPLOYEES**

### **REPORT ON ISSUES RAISED IN NOVEMBER 16, 1999 BOARD ORDER**

#### **BACKGROUND**

##### **How Disability Retirement Works**

Disability retirement benefits are an integral part of the contributory retirement plans known as General Member Plans A, B, C, and D and Safety Member Plans A and B. The benefit exists in two forms commonly referred to as "service-connected disability retirement" and "nonservice-connected disability retirement". Service-connected disability retirement benefits apply where an employee is disabled due to injury or illness "arising out of and in the course of employment", and nonservice-connected disability retirement benefits apply where an employee is disabled due to non-work related reasons. This report focuses on the application of the service-connected disability retirement benefits to safety employees.

Service-connected disability retirement benefits equal the greater of a) 50 percent of the employee's final compensation, or b) the benefit the employee has otherwise earned based on age and length of service. "Final compensation" means the employee's highest single year of pensionable compensation in the case of Safety Plan A, and the average of the highest three consecutive years of pensionable income in the case of Safety Plan B. In most cases, the first 50 percent of final compensation is tax exempt under State and Federal income tax law (a circumstance unique to service-connected disability retirement benefits).

For a service-connected disability retirement or death, there is an attendant survivor benefit equal to 100 percent of the allowance the retiree received (or would have received where death precedes retirement). This includes the same future cost-of-living adjustments (COLAs) the decedent would have received under the applicable retirement plan. The survivor also receives the same tax exempt status on this benefit as the decedent received (or would have received). This may be compared to ordinary service retirement or nonservice-connected disability retirement benefits under Safety Plans A and B where the survivor benefit is a fully taxable 60 percent allowance, unless the retiree designated a higher amount prior to retirement in exchange for an offsetting actuarially determined reduction in his or her retirement benefit.

In summary, service-connected disability retirement benefits do essentially three things ordinary service retirement and nonservice-connected disability retirement benefits do not do:

1. Provide a minimum benefit of 50 percent of final compensation.
2. Provide a tax exempt benefit on the first 50 percent of final compensation.
3. Provide a 100 percent survivor benefit (also tax exempt on the first 50 percent of final compensation).

### **LACERA Approval Process**

All service-connected disability retirement applications must be approved by the Board of Retirement. This is a nine member Board consisting of four Board of Supervisor's appointees; four elected employee/retiree representatives, and the County Treasurer and Tax Collector who is an ex officio member.

The process begins with the employee submitting an application, signed under penalty of perjury, and an accompanying statement from his or her personal physician documenting the basis for the physician's finding that the employee is permanently disabled from performing his or her job. The application is referred to a LACERA Disability Retirement Investigator who conducts a full staff evaluation of the claim. This normally includes an interview with the employee, a review of all available medical records, a review of the requirements of the employee's job, and collection of other relevant information which may include interviews with the employee's supervisor or other potential witnesses. If the employee previously filed a workers' compensation claim, the review will include those records, as well, although the Board of Retirement is not bound by any decision made under the workers' compensation program.

The Investigator refers the applicant out for an independent medical opinion. Every application for service-connected or nonservice-connected disability retirement involves a second independent medical opinion from a physician selected by the Investigator from a panel of physicians approved by the Board of Retirement. The independent medical examiner is provided with copies of the pertinent documentation the Investigator has gathered during the course of the investigation and a draft of the investigator's report of the investigation. Upon receiving the independent medical examiner's report, the Investigator incorporates the physician's findings and conclusions into a final draft of his or her report to the Board of Retirement.

The Investigator must recommend to the Board of Retirement a finding as to whether the applicant is permanently disabled from the performance of his or her job and whether the disability is service-connected. The application and the Investigator's report and recommendation, and the report of the independent medical examiner or examiners are then considered by the Board of Retirement in closed session to protect the privacy of the applicant. The applicant is allowed to be present along with his or her attorney, if any. Also present is the Board of Retirement's medical advisor in the event technical medical questions arise. The Board of Retirement has four options:

1. Approve the request.
2. Deny the request.

3. Approve a non-service-connected disability retirement in lieu of a service-connected disability retirement on the basis the employee is permanently disabled, but not from a work related cause.
4. Send the application back to staff for further investigation.

Whatever the outcome, a majority vote of the quorum present is required.

Where an application is denied, the applicant may request a hearing before a Board of Retirement selected Referee (who must be a member of the State Bar of California). The rules of the hearing are governed by rules adopted by the Board of Retirement. Applicants are normally represented by an attorney at the hearing. LACERA is represented by LACERA legal counsel at this point. The Referee's decision is ultimately submitted to the Board of Retirement which may either accept or reject the decision, make an entirely separate decision, refer the matter back to the Referee for further proceedings, or set the matter for a new hearing before the Board of Retirement as if the hearing with the Referee never happened (although we are advised that, as a practical matter, the Board of Retirement does not utilize the last option). This is the end of the administrative proceedings.

An applicant who receives an adverse decision from the foregoing process and who wishes to further appeal the matter may take the issue to the Superior Court and, ultimately, the California Court of Appeal and the California Supreme Court.

#### **Cost**

Service-connected disability retirement benefits generate added County costs in three ways:

- To the extent the minimum 50 percent benefit exceeds the benefit each retiree has otherwise earned based on age and service, the County must fund the marginal difference. Except for COLA adjustments applied after retirement, no portion of this cost is paid for by employee contributions. The COLA piece is financed with employer and active employee contributions on a 50/50 cost sharing basis.
- The marginal difference between the 100 percent survivor continuance and the 60 percent continuance (that otherwise applies to ordinary service retirements) must likewise be financed by the County. Except for the COLA, no portion of this cost is paid for with employee contributions.
- Workers' compensation costs, including salary continuation benefits required by Section 4850 of the Labor Code (commonly referred to as "4850 benefits"), are utilized extensively in connection with service-connected disability retirement benefits.

There currently exists no actuarial estimate of the marginal costs of the service-connected disability retirement program. Based on the June 30, 1999 LACERA Actuarial Valuation, we know the actuarial accrued liability for Safety Plan A and Safety Plan B totals approximately \$8.7 billion, and we know the County is currently required to make annual

employer contributions at the rate of 21.3 percent of payroll for Safety Plan A and 14.4 percent of payroll for Safety Plan B, but we do not know how much of this expense is attributable to the 50 percent minimum service-connected disability retiree allowance or the 100 percent survivor continuance. Nor do we have benefit utilization information that shows the types of injuries/illnesses being incurred and the age and service characteristics of the affected population. However, LACERA staff has indicated it will recommend to the LACERA Board of Investments that a detailed report on disability retirement experience and costs be obtained as soon as practicable and that future reports be routinely incorporated in future actuarial valuations.

Although we have no actuarial cost information, we know the following based on information contained in LACERA's Comprehensive Annual Financial Report for the fiscal year ending June 30, 1999 and other information gathered on an ad hoc basis for this report by LACERA staff:

- In fiscal 1998-99, the total annual retiree payroll equaled approximately \$982 million for 43,112 General and Safety Member retirees and survivors. Of this, approximately \$262 million (27%) is attributable to 7,478 Safety Members and their survivors.
- Of the \$262 million, approximately \$157 million (60%) is attributable to Safety Member service and nonservice-connected disability retirees or their survivors.
- During the three year period January 1, 1997 through December 31, 1999, approximately 53 percent of all Safety Member retirements were service-connected disability retirements, and approximately 3 percent were non-service-connected disability retirements (with the remaining 44 percent being regular service retirements). Thus, service-connected disability retirements are more the norm than the exception in the Safety ranks.
- During the two year period July 1, 1997 through June 30, 1999, approximately 80 percent of all Safety Member retirements involved employees whose age and service were sufficient to provide a benefit equal to or greater than the minimum guarantee of 50 percent of final compensation. In other words, the benefit payable to the retirees upon retirement was no greater than it would have been without the disability claim in 80 percent of the cases. For the remaining 20 percent, the average benefit payment for this two year sample group was \$2,747 per month.

From the above information, it may be concluded that the rate of service-connected disability retirement is high among Safety Members (at roughly 53 percent), but that the rate is not indicative of the added costs to the County since approximately 80 percent of the individuals in question have already earned the benefit they receive based on length of service. These employees are ostensibly interested in the tax advantage, and possibly the 100 percent survivor benefit, but there is no inducement in the form of additional retirement allowance from LACERA. What we do not know is the marginal cost to the County for the 20 percent group, for whom the 50 percent minimum is more than their earned retirement benefit, and the cost for the survivors, for whom the survivor benefit is calculated at 100 percent of the decedent's benefit rather than 60 percent.

Although the retirement benefits paid to the 80 percent group represent no additional cost to the County or the retirement system, the income tax exemption for both service-connected disability retirement benefits and workers' compensation benefits causes a loss in State and Federal revenue. In that sense, the public at large incurs part of the cost. This circumstance, however, is permitted by public policy embodied in State and Federal tax law.

## **REFORMS THAT WOULD MAKE AN IMPACT**

There are a number of changes that could significantly reduce the incidence of service-connected disability retirement, but all of them require changes in State law and negotiations with employee representatives. Two of the more compelling changes follow:

1. **Strengthen the job causation requirement:** Section 31720 of the Government Code sets forth the conditions for the payment of service-connected disability retirement benefits, including the standard that must be applied in determining job causation. That standard provides that the job must have "contributed substantially" to the disability. The "contributed substantially" wording was added by amendment in 1980 in an apparent attempt to strengthen the job causation test. However, the courts have since interpreted this wording in a manner that gives it relatively little significance. For example, in *Bowen v. the Board of Retirement* (1986) it was decided that "substantial" means the evidence supporting the job connection must be substantial, not the connection itself. In fact, the connection may be "small" as long as it is more than "infinitesimal". A small connection could include, for example, a relatively minor job caused aggravation of a pre-existing medical condition (which was not job caused) if the cumulative effect results in a permanent disability of sufficient severity to prevent the employee from performing his or her normal occupation.

A strengthening of the job causation standard in Section 31720 would probably go a long way toward reducing the incidence of service-connected disability retirement and the related costs for both the retirement and survivor benefit components of the program. An example of a relatively strong job causation standard can be found in the Los Angeles City Safety Members Pension Plan. This system, which is established by City Charter, provides for service-connected disability retirement benefits where there is "clear and convincing evidence" that the job was the "predominant cause of the disability". It is interesting to note that, despite the fact that the City's program provides for a tax exempt minimum guarantee of up to 90 percent of the employee's pensionable earnings depending on the severity of the disability, the City's disability rate for Safety employees is approximately 20 percent, or less than half the County's rate. This difference is due, we believe, to several factors, but the difference in the strength and clarity of the job causation language in the City Charter is, no doubt, a very important factor.

2. **4850 reform:** Section 4850 of the Labor Code provides that certain law enforcement and fire fighting personnel, including the County's law enforcement and fire fighting personnel, are entitled to special leave at full pay for injuries deemed compensable under the workers' compensation program. This benefit, which is commonly referred to as the "4850 benefit", is payable for up to 365 aggregate days per injury and is



considered a tax free workers' compensation benefit. The tax free status means that no state and federal withholding is taken while employees are out on this leave and that take-home pay increases accordingly. This benefit is routinely used by injured Sheriff's Deputies and Fire Fighters over the course of their careers, and it is also used, extensively, at the twilight of the careers of those individuals who make a claim for service-connected disability retirement.

Although 4850 benefits are workers' compensation benefits, not retirement benefits, they serve much like the "front end" of the service-connected disability retirement program for the majority of Safety retirees. A common pattern of behavior has the Safety member planning his retirement date one year from the point paid leave benefits under Section 4850 begin. During that year, the employee remains off work with a spike in take-home pay and receives one more year of retirement service credit before retirement benefits actually begin. The 1937 Retirement Act gives the employee the right to set his retirement date to coincide with the exhaustion of 4850 benefits and, following that, the exhaustion of any sick leave benefits should the employee elect to also exhaust his or her sick leave benefits prior to retirement. All in all, this makes for a very attractive way to transition into retirement (arguably too attractive), and that circumstance contributes to the overall costs of both the 4850 benefits, and other related workers' compensation costs, and service-connected disability retirement benefits. In fiscal 1998-99, the County spent a total of approximately \$22.7 million (all funds) on 4850 benefits for all Safety members, including those who were and were not on the brink of retirement that parallels 4850.

The City of Los Angeles has a tax free 100 percent of salary benefit that parallels 4850 for City Fire Fighters and Police Officers. For Police Officers, however, the benefit is paid at 100 percent of salary only if the disability is the result of "sudden, severe, traumatic injury." Otherwise, the benefit equals the employee's gross pay reduced by the value of the state and federal withholding that is not required while the benefit is being paid. In other words, where non-sudden, severe, traumatic injuries affecting sworn Police personnel are concerned, the City effectively keeps the state and federal withholding thus reducing its costs and preventing the increase in take-home pay that would otherwise result. Non-sudden, severe, traumatic injuries would typically include injuries related to stress, cumulative trauma, heart disease, or any other condition not directly attributable to a sudden trauma. We believe the County's costs could be reduced significantly by an amendment to Section 4850 that mitigates the increase in take-home pay that currently results in every case under this benefit.

There are two other differences between the City and County systems that may further explain the difference in service-connected disability retirement rates: 1) the City retirement system does not provide for a job causation presumption for heart disease or cancer (or any other disease), and 2) the City system recoups the cost of workers' compensation temporary and permanent disability benefits paid to service-connected disability retirees by offsetting those costs from disability pensions. This recoupment extends to temporary and permanent disability benefits paid both prior to and after retirement that are attributable to either the same or a different injury than the injury causing the retirement, regardless of when the injury or injuries were

incurred or when any prior workers' compensation benefits were paid. For example, if a City Police Officer incurs a workers' compensation injury in, say, his second year of service and then retires after 20 years on a service-connected disability retirement caused by an injury unrelated to the injury incurred in the second year of employment, the City will recoup all of the temporary and permanent disability costs associated with both injuries even though the first injury was unrelated and occurred 18 years prior. In contrast, the 1937 Retirement Act provides for no recoupment or other form of coordination of workers' compensation and service-connected disability retirement benefits.

In considering legislative reform and other potential changes addressed in this report, it should be noted that any change that impacts existing employees could generate employee claims of vested rights to the current service-connected disability retirement program as it operates under the rules in place today.

#### **FINDINGS ON ISSUES INCLUDED IN BOARD ORDER**

1. **Issue:** "Review class specifications for safety members of LACERA to determine whether each physical classification is appropriate for all persons holding the same position, and recommend new classifications to reflect different duties, as warranted."

**Findings:** We do not believe the bifurcation of Safety employee classes into "arduous" and "non-arduous" versions would be an appropriate or effective means of reducing the costs of the service-connected disability retirement program and we do not recommend this course of action be pursued. Although there is precedent in the County for establishing separate classes based on the physical requirements of the job, and even separate physical classification specialties within the same class, this suggestion would effectively create a two tiered Safety population with only one tier accountable for performing the full range of duties normally required of law enforcement and fire fighting personnel. We believe such an arrangement is not workable on a practical level, not conducive to public safety in the long term, and not justified from a position classification point of view.

Under Civil Service Rule 5, the physical requirements of the job are one of the factors used to distinguish between the various classes of positions. There are currently three physical classifications known as "Light, Moderate, and Arduous": In the Sheriff's Department, the Arduous designation applies to the classes of Deputy Sheriff and Sergeant, and the Moderate designation applies to Lieutenant and above. In the Fire Department, the Arduous designation applies to Fire Fighter up through Battalion Chief, and the Moderate designation applies to Assistant Fire Chief and above. The question, here, is whether it would make sense to take the class of Deputy Sheriff, for example, and subdivide it into Arduous, Moderate, and possibly Light versions where individual positions within the class involve desk work or other so called light duty. The sole purpose of this change would be to put the Board of Retirement in a better position to deny applications for disability retirement from persons whose last assignment was in the Moderate or Light versions of the classes in question and whose physical limitations are compatible with those designations.

By way of example, if a Deputy Sheriff assigned to Patrol were to suffer an orthopedic injury and permanent disability that precluded his or her continuing in that assignment, the employee would be a candidate for a service-connected disability retirement. If, however, this individual could perform desk work and were transferred to a so called "light duty" assignment in, say, the Records and Identification Bureau as an accommodation, the employee would, under this proposal, be administratively reassigned from Deputy Sheriff, Arduous to Deputy Sheriff, Moderate (or Light, depending on the specific duties in question) at presumably no loss in pay. In addition to having a different physical class designation, the new class would necessarily have a narrower scope of duties. If this same individual subsequently applied for a service-connected disability retirement, and if the theory behind this suggestion works, the application would be denied on the basis the employee can fully perform all the duties of his or her current class of Deputy Sheriff, Moderate (or Light as the case may be).

We see at least two major problems with the creation of non-arduous Safety classes:

- a. The Sheriff and Fire Chief acknowledge there are temporary light duty Safety employee assignments within their respective departments, but no permanent light duty assignments. Both departments take the view that Safety employees should be capable of performing a full range of duties and available for redeployment at the discretion of the Sheriff or Fire Chief, or be retired. Both departments believe that service-connected disability retirement considerations must be subordinate to public safety considerations and that permanent light duty restrictions on a portion of the Safety employee workforce would not be consistent with this thinking. In articulating this view, both departments acknowledge that: 1) not all Safety employee assignments are necessarily equal in terms of exposure to risk or arduous work, and 2) not all Safety employees, at any point in time, are necessarily capable of performing a full range of duties. In addition, the Sheriff's Department acknowledges that light duty assignments have, on occasion, existed for extended periods of time in that department.

Given the foregoing, we cannot concur with the creation of a non-arduous classification for any Safety position if the duties for that position involve at least a contingent responsibility to perform the more arduous activities associated with law enforcement or fire fighting work. To do so would be wrong from a technical classification point of view and presumably of no value to the Board of Retirement in making decisions on service-connected disability retirement applications.

- b. Given the full range of duties requirement imposed by the Sheriff and Fire Chief, it is very questionable whether this proposal would hold up, legally, absent a clarifying change in the 1937 Retirement Act. Nothing short of an amendment that effectively compels an employee to accept light duty as an alternative to disability retirement would be certain to have the desired effect on disability retirement costs.

- c. Setting aside, for the moment, the views of the Sheriff and Fire Chief on permanent light duty, the new classes, if created, would necessarily have to exclude all duties potentially requiring arduous activity, such as making arrests and fighting fires. To have a significant impact on retirement costs, these limitations would have to be observed strictly and apply to a significant number of employees who would otherwise represent a high disability retirement risk. Although it is unclear whether the numbers would be significant, if they were, the new classes would restrict the staffing flexibility and response capabilities in the Sheriff's Department and Fire Department, particularly in times of major emergency. Moreover, the new light duty classes would eventually become populated with employees with work restrictions, not necessarily the individuals most suited for these assignments. Without more information regarding the marginal cost of the service-connected disability retirement benefits in question, there is no way to cost justify this circumstance.

We understand the concern that may exist when a Safety employee receives a service-connected disability retirement following a career that ends with a stint in a light duty assignment. It would appear the employee is performing his assignment satisfactorily one day and "disabled" the next day even though his medical condition may be relatively unchanged. However, we believe legislative reform relative to job causation, 4850 benefits, and other systemic changes to the retirement and workers' compensation programs remain the most direct and appropriate means of addressing this issue.

2. **Issue:** "Review the feasibility and desirability of moving employees in arduous jobs into less physically demanding jobs after a certain period of time, or at a certain age, or both, so as to prevent disability resulting from continuous trauma."

**Finding:** Safety Members hired on or before March 31, 1997 are currently subject to mandatory retirement that essentially removes all of them from service at age 60. Safety Members hired subsequent to that date are not subject to mandatory retirement. Aside from this, we do not believe it would be legally permissible to force changes in Safety Member assignments based solely on age or length of service without an accompanying assessment of each individual's physical and mental capability to perform the work.

County Counsel further advises that any policy that would deny Safety Members access to particular assignments based solely on age would likely be discriminatory under the Federal Age Discrimination in Employment Act (ADEA). Moreover, any policy that bases such decisions solely on length of service or time spent in a particular assignment would likewise be discriminatory under the ADEA given that the policy would tend to affect older workers disproportionately. It would appear that the only way to legally remove older employees from assignments that may pose excessive risk of disability is to base the removal on a medical assessment of each individual. Otherwise, this proposal becomes a defacto argument to impose a below age 60 mandatory retirement age on the entire Safety population.

Aside from legal concerns, we think this idea is inadvisable because:

- a. It would likely create significant operational disruption from the premature loss of experienced and qualified personnel in key assignments (and associated loss in employee morale). The proposal does not address where the employees in question would go or whether there would be sufficient limited duty for them to perform. Again, the Fire Department does not have any permanent light duty assignments.
- b. Although we understand this suggestion is intended as an injury prevention measure, it is difficult to make the case that an employee should be presumed unfit to do the job based on age, but not eligible for disability retirement. This could be a "you can't have it both ways" predicament that could create the very outcome it attempts to avoid by helping build the employee's disability retirement case.
- c. The Fire Department has recently implemented a "Wellness/Fitness Initiative" that, among other things, provides for mandatory annual physical exams for Fire Fighters. Aside from concern over where we would put the employees, it would arguably make no sense, and expose the County to further risk under the ADEA, if we removed a Fire Fighter from his normal assignment on account of age or length of service in the face of medical evidence that says he or she can perform the job.
- d. As a practical matter, this phenomenon happens naturally, to a considerable degree, in the Sheriff's Department. Employees, as they age, tend to voluntarily gravitate to the more specialized assignments that require more experience and less youth.

3. **Issue:** "Review applicable statutes, County policies and departmental policies which permit disability to be considered service-connected based on injuries sustained in off-duty activities, and recommend appropriate changes."

**Findings:** There are two types of activities that enter into this issue: 1) off-duty athletic/sports events, and 2) off-duty physical training/conditioning. The issue, in both cases, concerns the County's exposure to service-connected disability retirement costs where the activities are endorsed by the Sheriff's Department or the Fire Department.

LACERA reports that, over the past ten years, there have been 24 approved service-connected disability cases where the disability was attributable to a sports or physical training injury. Sixteen of these cases involved Sheriff's personnel, and eight involved Fire personnel. Of the sixteen Sheriff's Department cases, fifteen were sports injuries and one was a physical training injury. All eight of the Fire Department cases were physical training injuries. Here, again, we have no actuarial information or other detail on the retirement benefit liability these cases represent.

## **Fire Department**

The Fire Department reports they have no written policy on sports activities, that they have sanctioned some events in the past on an ad hoc basis, but that they no longer do that. They report they occasionally receive requests in this regard from employees, but they are routinely denied and they consider this issue a non-issue at this point. The absence of any sports related service-connected disability retirement claims from Fire personnel in the last ten years would tend to corroborate this.

Under the Fire Department's new Wellness/Fitness Initiative, weight training is permitted along with access to various exercise equipment at County Fire stations as a part of a concerted injury prevention/rehabilitation program. Although we must assume that any form of physical training activity, no matter how well administered, will generate occasional injuries, the Fire Department anticipates that their injury rate from fire fighting injuries will drop since the Fire Fighters will be stronger and more physically fit. Where injuries do occur, the enhanced rehabilitation program should return the employees to duty more quickly. In any case, we do not anticipate sports related workers' compensation or service-connected disability retirement claims emanating from this department.

## **Sheriff's Department**

As stated in a February 3, 2000 joint report from the Director of Personnel and the Sheriff, the Sheriff is currently in the process of curtailing various off duty sporting events. The County Counsel has advised the Sheriff that this change must be negotiated with employee representatives.

The Sheriff has provided a written proposal to the union outlining a new policy that would limit the list of sporting activities to three major events, unless other events are specifically approved by the Chief of the Personnel and Training Division. The three guaranteed events include the California Police and Fire Summer Games, the Baker to Vegas Challenge Cup Relay, and the Annual Memorial Torch Run. In addition, the new policy would permit running and weight training on Sheriff's facilities under controlled conditions. The Sheriff reports that large numbers of Sheriff's Department employees participate in one form or another in the three specified sporting events. The Baker to Vegas event, for example, may draw as many as 2,500 employees counting the employees who function in various support roles.

4. **Issue:** "Review workers' compensation concepts of 'apportionment' in the context of disability retirement, report back to the Board on the feasibility and desirability of limiting benefits to the extent disability results from non-industrial causes, and recommend any necessary changes in statutes, County ordinances or policies to accomplish this goal."

**Finding:** The workers' compensation concept of "apportionment" comes into play when a pre-existing medical condition, not attributable to a work-related injury, is aggravated by a subsequent injury that is work-related. The concept, which applies principally to workers' compensation disability income benefits known as "permanent

disability benefits", provides that the benefits shall be adjusted to reflect the proportion of the injury caused by the aggravation. The concept does not apply to workers' compensation temporary disability benefits, medical benefits, or death benefits. For reasons explained more fully below, we do not recommend this feature be incorporated into the service-connected disability retirement benefit structure.

This question should be addressed in two parts: a) should an apportionment mechanism of some kind apply to service-connected disability benefits, and b) should the same mechanism apply to survivor benefits where death occurs before retirement. With regard to the disability piece, it should be noted that, as a practical matter, the "higher of" nature of the benefit calculation creates nothing to apportion in the estimated 80 percent of the cases where the retiree has earned the benefit he or she receives based solely on age and service. That benefit is a vested benefit independent of the disability claim. For the remaining 20 percent of the cases, the apportionable amount would, presumably, be limited to the difference between 50 percent of final compensation and the minimum amount otherwise payable for a nonservice-connected disability retirement. The nonservice-connected minimum is no pension whatsoever for those with less than five years of service and, for those with five years or more of service, the higher of the earned benefit or 33 1/3 percent of final compensation in most cases. Assuming the 33 1/3 percent floor would be unaffected by this proposal, the issue is limited to the 16 2/3 percent spread between 50 percent and 33 1/3 percent, or a lesser amount in those cases where the earned benefit is somewhere between 33 1/3 percent and 50 percent of final compensation.

Establishing an apportionment mechanism to be applied only to the 16 2/3 spread is not recommended because:

- a. It would be relatively ineffective at reducing costs because it would apply to a relatively small piece of the overall liability. At the same time, however, it could logically raise questions as to whether the 50 percent minimum benefit should be "apportioned up" where the disability is severe and the degree of job causation is high. Although a benefit tied to the severity of the disability is not unheard of, as evidenced by the City of Los Angeles' program, we would not recommend a change of this sort for the County absent significant reforms in the job causation standard and 4850 benefit as mentioned previously in this report.
- b. Workers' compensation benefits are intended to compensate an individual for a work related injury, and Safety retirement benefits are intended to protect the public by allowing Safety Members to retire before physical or mental incapacity interferes with the performance of the job. One is a compensation issue and one is a public safety issue. The point that is often made is that no one wants an unfit Fire Fighter climbing a tall stairwell to pull them out of a burning building. Disability retirement is an important part of the Safety retirement concept because it enables a relatively young employee to leave the system if he or she has incurred a career ending injury prior to earning a retirement benefit of at least 50 percent. The apportionment idea is essentially antithetical to this objective.

With regard to survivors benefits, there is no workers' compensation apportionment concept that applies to death benefits. Therefore, there is, technically, no concept to borrow from workers' compensation. Independent of workers' compensation concepts, however, it is difficult to justify a reduction in benefits in a death case on the basis of a pre-existing health problem(s) on the part of the decedent. No matter what the decedent's prior health status or age may have been, it is only the most recent "aggravating" event that makes the difference between life and death. But for that event, the decedent would be alive and that circumstance does not provide a logical basis for apportionment.

We know of no public or private retirement system that apportions death benefits.

5. **Issue:** "Review the impact on LACERA of statutory presumptions with respect to disability and causation, and provide the Board with a report on the desirability of proposing State legislation that would allow statutory presumptions to be rebutted by other evidence."

**Finding:** There are now two statutory presumptions under the 1937 Retirement Act:

- a. Section 31720.5 of the Government Code provides that "heart trouble" experienced by a Safety Member with at least five years of retirement service credit shall be presumed to be job connected in every case. This presumption is irrebuttable.
- b. Section 31720.6, which was signed into law last year (SB 558), establishes a new presumption for cancer providing the employee "demonstrates he or she was exposed to a known carcinogen as a result of performance of job duties". The section provides that the presumption is "disputable", with evidence that shows the carcinogen in question was "not reasonably linked to the disabling cancer, provided the primary sight of the cancer has been established". Section 31720.6 further provides that the cancer presumption may be invoked retroactively up to five years following retirement depending on the retiree's prior length of service.

It is important to note that a disability retirement granted as a result of applying a presumption that is irrebuttable, such as the heart presumption, cannot generate a tax exempt status on the first 50 percentage points of retirement income as is normally the case with service-connected disability retirement. Service-connected disability retirement benefits are tax exempt only to the extent permitted by Section 104(a)(1) of the Internal Revenue Code, and related regulations, which limit the tax exempt status to amounts received under a "workmen's compensation act, or a statute in the nature of a workmen's compensation act". While there is no dispute that the service-connected disability retirement provisions in the 1937 Retirement Act generally meet this test, the Internal Revenue Service has taken the position that an irrebuttable presumption creates doubt as to job causation to the point where any benefit paid on the basis of such a presumption must be considered fully taxable. Thus, the disadvantage to utilizing the heart presumption, from the employee's perspective, is the loss of the tax exempt status.



The new cancer presumption is less clear as to its tax impact. The presumption is irrebuttable if the origin of the cancer on the body cannot be determined. (The new law applies to all forms of cancer). Where the origin can be determined, the basis for rebutting the presumption is limited to showing that the carcinogen to which the employee was exposed is not reasonably linked to the type of cancer that has been contracted. No other basis for rebuttal is allowed. Therefore, if a Fire Fighter who is a heavy smoker contracts lung cancer, but can show he or she was exposed at work to a carcinogen that is reasonably linked to lung cancer, the presumption will stand. Given these facts, this presumption is not fully rebuttable and it is not clear at this point how the Internal Revenue Service will react to the provision.

In calendar 1999, there were a total of 18 service-connected heart cases involving Safety Members. In eight of these cases, job causation was established under Section 31720 without the use of the presumption. That is, the availability of the presumption does not foreclose filing a claim with supporting medical evidence as if the presumption did not exist, and many employees do that in the hopes of attaining the tax exempt status. In the other ten cases, job causation was decided based on the presumption. It is reasonable to conclude, therefore, that 10 out of 18 cases in 1999 would have been denied if the presumption were rebuttable. That would have shaved approximately four percentage points off the aforementioned 53 percent service-connected disability retirement rate.

We do not know how many additional claims LACERA might have received if the heart presumption were rebuttable given the appeal of the related tax exemption. It is reasonable to conclude, however, that the number would go up. It is also reasonable to conclude that the number of presumption based claims would go up if the Section 31720 job causation standard were strengthened, as suggested earlier in this report, as fewer heart cases would qualify based strictly on the medical evidence.

LACERA has no information at this point as to the estimated impact of the new cancer presumption. The provision has been in place for approximately two months and we are informed they are currently investigating two claims that could potentially qualify under the new provision. We will have to wait for more experience.

Ideally, there should be no presumptions involving any illnesses as prevalent as heart disease and cancer. But, if these presumptions are going to exist, they should be fully rebuttable with all relevant information that argues against job causation. Section 31720.5 should be amended by adding language to make the heart presumption rebuttable and Section 31720.6 should be amended to clean up the language that is already there. To some degree, creating a clear cut tax advantage for these employees through making the presumptions fully rebuttable is a bit of a two edged sword as it may serve to attract more claims than would otherwise be the case. However, heart disease or cancer that permanently incapacitates an employee is presumably a retirement case that is going to occur at some point, and it would appear that the need to rebut the questionable claims of job causation outweighs any other consideration. Any amendment making a presumption rebuttable could only be applied to employees hired after the effective date of the amendment.

It should also be noted that AB 1817 (Correa) introduced this year would create a new rebuttable presumption for "blood borne infectious diseases". We will be formally recommending to the Board that the County oppose this measure.



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL

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May 15, 2000

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Syn. No. 2  
5-16-00

TO: SUPERVISOR GLORIA MOLINA, Chair  
SUPERVISOR YVONNE BRATHWAITE BURKE  
SUPERVISOR ZEV YAROSLAVSKY  
SUPERVISOR DON KNABE  
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: LLOYD W. PELLMAN *[Signature]*  
County Counsel

RE: Safety Employee Disability Retirement

With respect to the CAO Report on Service-Connected Disability Retirement Benefits considered by your Board at last Tuesday's meeting, you asked County Counsel to report on the following issues: (1) reasons Los Angeles County operates under different rules with respect to disability retirement benefits than other jurisdictions such as the City of Los Angeles; (2) whether any existing County MOUs deal with disability retirement issues; and (3) what criteria are used by the retirement board in evaluating cases. Our responses follow:

1. The difference between the County retirement system and that of the City is the result of two different statutory schemes.
  - The County is governed by the County Employees Retirement Law of 1937 ("1937 Law"), Government Code section 31450, et seq. Twenty California counties have chosen to be covered under the 1937 Law, as shown on the enclosed list.

- Under Government Code section 31720, a member "shall" be retired for disability if the member's incapacity is a result of injury or disease arising out of and in the course of the member's employment, and such employment contributes substantially to such incapacity.
- The term "contributes substantially" as generously interpreted in case law can mean even a small or minor degree of causation, although something more than "infinitesimal."
- By contrast the City's system, established by the City Charter, provides disability retirement benefits where there is "clear and convincing evidence" that the job was the "predominant cause of the disability."
- Labor Code section 4850, providing one year of salary continuation benefits to safety personnel with injuries compensable by workers' compensation, only applies to individuals who are members of the Public Employees' Retirement System or subject to the 1937 Law. Thus, section 4850 is inapplicable to the City of Los Angeles or non-1937 Law counties.

2. Existing County MOUs do not address disability retirement issues, but do include a provision authorizing the County to comply with applicable laws.
  3. The processing of disability retirement applications is governed by Bylaws and Disability Retirement Hearing Procedures adopted by the LACERA Board, subject to the eligibility standards mandated by the 1937 Law.
- Disability retirement applications can be granted either at an initial stage, based upon a staff report or, in the event the Board initially denies the application, after an appeal and full administrative hearing.

- In the event a disability retirement application is denied, formal findings must be adopted by LACERA. Case law requires that the findings must "bridge the analytical gap" between evidence and conclusion.

LWP:SRM:asv

Enclosure

c: David E. Janssen  
Chief Administrative Officer

Violet Varona-Lukens, Executive Officer  
Board of Supervisors

Michael J. Henry  
Director of Personnel

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## COUNTIES

1. Alameda
  2. Contra Costa
  3. Fresno
  4. Imperial
  5. Kern
  6. Los Angeles
  7. Marin
  8. Mendocino
  9. Merced
  10. Orange
  11. Sacramento
- 
12. San Bernardino
  13. San Diego
  14. San Joaquin
  15. Santa Barbara
  16. San Mateo
  17. Sonoma
  18. Stanislaus
  19. Tulare
  20. Ventura



**COUNTY OF LOS ANGELES  
DEPARTMENT OF AUDITOR-CONTROLLER**

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**J. TYLER McCAULEY**  
AUDITOR-CONTROLLER

November 28, 2000

**To:** Supervisor Gloria Molina, Chair  
Supervisor Yvonne Brathwaite Burke  
Supervisor Zev Yaroslavsky  
Supervisor Don Knabe  
Supervisor Michael D. Antonovich

**From:** J. Tyler McCauley  
Auditor-Controller

**Subject:** **SAFETY EMPLOYEES – REVIEW OF SERVICE CONNECTED  
DISABILITY RETIREMENTS**

On June 20, 2000, your Board instructed the Auditor-Controller, with the assistance of the Chief Administrative Officer (CAO), Director of Personnel, and County Counsel, to conduct a review of service-connected disability retirement claims filed by safety members in the last two years. The review was to include a comparison of claims from at least five other 1937 Retirement Act counties.

The CAO issued a report dated May 5, 2000, which recommended the pursuit of various changes in State law and additional employee negotiations to address some of your Board's concerns. Implementing these recommendations would undoubtedly reduce the number of service-connected disability retirements throughout all of the 1937 Retirement Act counties. However, your Board requested this review to determine why the service-connected disability retirement rates in other counties operating under the same State law are not as disturbing as the rates in Los Angeles.

**Summary of Findings**

Our review disclosed that Los Angeles County is not the only county experiencing high service-connected disability retirement rates. However, while some counties are experiencing lower rates, we were unable to specifically identify why. We noted a number of differences in the claims processes used by these counties, however, we were unable to document or quantify the impact, if any, that these differences may have had on the number of service-connected disability retirements.

Overall, we believe two factors are contributing to the number of service-connected disability retirements. One item pertains to the "Full Range of Duties Policy" adopted by

the Sheriff and Fire Departments. The other item relates to current legislation and the ease with which employees can obtain a service-connected disability retirement. These two items are discussed in detail below.

#### "Full Range of Duties" Policy

A revision or modification to the full range of duties policy could have a significant impact on the number of service-connected disability retirements. For example, by "narrowing" or "limiting" the range, injured or disabled employees in non-arduous assignments could, in many cases, continue to perform their existing assignments in lieu of taking a service-connected disability retirement. Those performing more arduous tasks could be assigned to a light or moderate duty assignment. However, the Sheriff and Fire Departments are currently opposed to changing this policy.

A change in the current full range of duties policy might reduce the number of disability retirements. For example, in Harmon versus the San Mateo County Employees Retirement Association, the employee was denied a service-connected disability retirement in part because the medical evidence suggested that the employee was not incapacitated for the performance of his duties, as is required by the 1937 Retirement Act. The Court found that it was not proven that the department had no light duty positions suitable for Harmon, notwithstanding its full range of duties policy. In this example, the court held that an applicant is entitled to a disability retirement if he or she is substantially unable to perform the "usual" duties of the job, as opposed to the full range of duties which may include duties performed on an occasional or remote basis.

We believe a number of employees taking service-connected disability retirements are still capable of employment in non-arduous assignments, either in their current, or in another, County department. However, a number of significant changes would need to occur before obtaining the desired effect on service-connected disability retirements. These changes would include having the Sheriff and Fire Departments abandon their full range of duties policy.

The County Employees Retirement Act of 1937 entitles employees to service-connected disability retirements if they are incapacitated from the performance of their "duties in the service." Under current law such "duties in the service" for safety personnel, such as Sheriff deputies and fire fighters, would not necessarily include non-safety related duties in other County departments. However, the County might pursue legislative changes to the Retirement Act to redefine "performance of duties in the service" to include non-law enforcement related duties in other County departments to which employees could be reassigned. Such changes could apply prospectively to future County employees.

This kind of legislative change would permit the placement of employees into positions with other County departments when all light duty positions in the employees' existing department have been filled, thereby precluding the granting of service-connected disability retirement benefits to those who refuse such employment.



In light of the Sheriff and Fire Departments' position on this issue and potential legislative issues, changes in this area cannot be immediately made. Accordingly, should the Board desire to pursue these issues further, they need to request the Sheriff and Fire Departments to abandon their full range of duties policy. In addition, the Board would need to request the Department of Human Resources, County Counsel and the CAO to pursue the legislative changes discussed above.

### Recommendations

If the Board determines it wishes to pursue changes related to the full range of duties policy, the Board of Supervisors:

1. Request the Sheriff and Fire Departments to change their full range of duties policy.
2. Request the Department of Human Resources, County Counsel and the CAO to pursue necessary legislative changes.

### Legislative Reform

Similar to the conclusion reached by the CAO, we determined that no significant reduction in the service-connected disability retirement rate can be expected unless legislative changes take place. A stronger, more definitive job causation standard is needed, similar to that found in the Los Angeles City Charter. That standard provides for service-connected disability retirement benefits when there is "clear and convincing evidence" that the job was the "predominant cause of the disability".

Another recommended change pertains to the workers' compensation benefits payable under Section 4850 of the Labor Code. In the City of Los Angeles, the benefit is paid at 100% only if the disability is the result of "sudden, severe, traumatic injury", as opposed to the County of Los Angeles where the benefit is always paid at 100%.

We believe the number of service-connected disability retirements could be significantly reduced by amending legislation as discussed above. Accordingly, we recommend the CAO continue to pursue these and other legislative changes discussed in their May 2000 report.

### Recommendation

3. The Board of Supervisors direct the CAO to continue to pursue the disability retirement reforms discussed above and as outlined in their May 2000 report.

Overall, while modifications to the full range of duties policy and legislative changes are critical to reducing the incidence of service-connected disability retirements, it should be noted that the cost impact to the County is not necessarily as significant as some might believe. For approximately 80% of the individuals receiving a service-connected disability retirement, the earned retirement benefit based on years of service is greater.

than the 50% minimum benefit payable under this provision. The primary incentive in seeking a service-connected disability retirement is the tax-exempt status permitted by State and federal law on the first 50% of the benefit, and possibly the survivor benefits which are paid at 100%.

### Other Findings

We noted that LACERA has not had an independent audit of its claims administration process. A detailed review would include determining if claim files contain appropriate documentation; staff and Retirement Board decisions are adequately documented and supported; and generally, whether internal policies and procedures have been complied with.

LACERA, as with any organization, should have periodic, independent reviews of its internal operations. Periodic reviews ensure that processes are functioning as intended, and identify weaknesses that may not be identified in the normal course of operations.

### Recommendation

4. The Board of Supervisors request LACERA to have periodic, independent reviews of its claims administration process, to determine if claim files contain appropriate documentation; staff and Retirement Board decisions are adequately documented; and whether internal policies and procedures are complied with.

Details of these and other findings are discussed in the attached report.

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### Review of Report

Our report was reviewed by representatives from the CAO, County Counsel, Department of Human Resources, the Treasurer and Tax Collector, LACERA, Sheriff and the Fire Department.

If you have any questions, please call me or have your staff call Pat McMahon at (213) 974-0301. We thank management and staff from all the Departments for their cooperation and assistance during our review.

JTM:PM:TK  
Attachments

c: David E. Janssen, Chief Administrative Officer  
Violet Varona-Lukens, Executive Officer  
Public Information Office  
Audit Committee Members  
Lloyd W. Pellman, County Counsel  
Michael J. Henry, Director of Personnel  
Leroy D. Baca, Sheriff  
P. Michael Freeman, Fire Chief  
Marsha D. Richter, Chief Executive Officer, Los Angeles County Employees Retirement Association  
Mark Saladino, Treasurer and Tax Collector

## **Safety Employees – Review of Service-Connected Disability Retirements**

### **Background**

On June 20, 2000, the Board of Supervisors instructed the Auditor-Controller, with the assistance of the Chief Administrative Office (CAO), Director of Personnel and County Counsel, to conduct a review of service-connected disability retirement claims filed by safety members in the last two years. The review was to include a comparison of claims from at least five other 1937 Retirement Act counties.

The Chief Administrative Office issued a report dated May 5, 2000, which recommended the pursuit of various changes in State law and additional employee negotiations to address some of the Board's concerns. The CAO's recommendations would no doubt have a positive influence in reducing the number of service-connected disability retirements throughout all counties affected. However, the Board requested this review to determine why the service-connected disability retirement rates in other counties operating under the same State law are not as disturbing as the rates in Los Angeles.

### **Scope and Objectives**

The purpose of our review was to evaluate the Los Angeles County Employees Retirement Association's (LACERA) Board hearing practices and procedures and compare their process for administering service-connected disability retirement claims to the processes used in other counties, and to determine if there are other methods or controls in place that could effectively reduce the number of claims in Los Angeles. We also evaluated the use of worker's compensation benefits available through Section 4850 of the Labor Code (4850 benefits), the year prior to retiring under a service-connected disability, and how other counties utilize job classifications and/or non-sworn personnel to reduce the number of service-connected disability retirement claims.

Our review consisted of interviews with various Departmental personnel (i.e., CAO, County Counsel, Human Resources, LACERA, Sheriff, Fire, the Treasurer and Tax Collector, etc.). We also surveyed seven of the 1937 Retirement Act counties to determine the rate at which their safety members are taking service-connected disability retirements. In addition, we evaluated the policies and procedures for these seven counties with respect to the administration of disability retirement claims.

### **Summary/Conclusions**

Our review disclosed that Los Angeles County is not the only county experiencing high service-connected disability retirement rates amongst its safety population. For example, Sacramento County reports an average safety member service-connected disability retirement rate of approximately 60% per year, while Ventura County reports an average of 43% for the two-year period ended June 30, 2000. Los Angeles' rate for the same two-year period was 51% (see Table 1, Page 7).

**AUDITOR-CONTROLLER**  
**COUNTY OF LOS ANGELES**

While some counties did experience lower service-connected disability retirement rates, we were unable to specifically identify why. We noted a number of differences in the claims processes used by these counties, however, we were unable to document or quantify the impact, if any, that these differences may have had on the number of service-connected disability retirements. Other factors that may be contributing to the high rates in Los Angeles include cultural differences in regards to what employees believe they are entitled to, and potentially the volume and nature of crimes in the County, which may be resulting in more injuries.

Overall, we believe two factors are contributing to the number of service-connected disability retirements in not only Los Angeles, but in the other 1937 Retirement Act counties. One item pertains to the "Full Range of Duties Policy" adopted by the Sheriff and Fire Departments. The other item, discussed extensively in the CAO's May 2000 report, relates to current legislation and the need to both strengthen and clarify the job causation requirement in the State Legislation. There is also a need to pursue additional legislative reforms, such as an amendment to Section 4850 of the Labor Code, that would make it more difficult, and less enticing, to secure a service-connected disability retirement. Details of these two issues, including additional recommended legislative changes, are discussed below.

#### Full Range of Duties Policy

A revision or modification to the full range of duties policy could have a significant impact on the number of service-connected disability retirements. For example, by "narrowing" or "limiting" the range, injured or disabled employees in non-arduous assignments could, in many cases, continue to perform their existing assignments in lieu of taking a service-connected disability retirement. Those performing more arduous tasks could be assigned to a light or moderate duty assignment. However, the Sheriff and Fire Departments are currently opposed to changing this policy.

A change in the current full range of duties policy might reduce the number of disability retirements. For example, in Harmon versus the San Mateo County Employees Retirement Association, the employee was denied a service-connected disability retirement in part because the medical evidence suggested that the employee was not incapacitated for the performance of his duties, as is required by the 1937 Retirement Act. The Court found that it was not proven that the department had no light duty positions suitable for Harmon, notwithstanding its full range of duties policy. In this example, the court held that an applicant is entitled to a disability retirement if he or she is substantially unable to perform the "usual" duties of the job, as opposed to the full range of duties which may include duties performed on an occasional or remote basis.

We believe a number of employees taking service-connected disability retirements are still capable of employment in non-arduous assignments, either in their current, or in another, County department. However, a number of significant changes would need to occur before obtaining the desired effect on service-connected disability retirements.

These changes would include having the Sheriff and Fire Departments abandon their full range of duties policy.

The County Employees Retirement Act of 1937 entitles employees to service-connected disability retirements if they are incapacitated from the performance of their "duties in the service." Under current law such "duties in the service" for safety personnel, such as Sheriff deputies and fire fighters, would not necessarily include non-safety related duties in other County departments. However, the County might pursue legislative changes to the Retirement Act to redefine "performance of duties in the service" to include non-law enforcement related duties in other County departments to which employees could be reassigned. Such changes could apply prospectively to future County employees.

This kind of legislative change would permit the placement of employees into positions with other County departments when all light duty positions in the employees' existing department have been filled, thereby precluding the granting of service-connected disability retirement benefits to those who refuse such employment.

In light of the Sheriff and Fire Departments' position on this issue and potential legislative issues, changes in this area cannot be immediately made.

#### Legislative Reform

Similar to the conclusion reached by the CAO, we determined that no significant reduction in the service-connected disability retirement rate can be expected unless legislative changes take place. A stronger, more definitive job causation standard is needed, similar to that found in the Los Angeles City Charter. That standard provides for service-connected disability retirement benefits when there is "clear and convincing evidence" that the job was the "predominant cause of the disability".

Another recommended change pertains to the workers' compensation benefits payable under Section 4850 of the Labor Code. In the City of Los Angeles, the benefit is paid at 100% only if the disability is the result of "sudden, severe, traumatic injury", as opposed to the County of Los Angeles where the benefit is always paid at 100%.

We believe the number of service-connected disability retirements could be significantly reduced by amending legislation as discussed above.

While modifications to the full range of duties policy and legislative changes are critical to reducing the incidence of service-connected disability retirements, it should be noted that the cost impact to the County is not as significant as some believe. For approximately 80% of the individuals receiving a service-connected disability retirement, the earned retirement benefit based on years of service is greater than the 50% minimum benefit payable under this provision. The primary incentive in seeking a service-connected disability retirement is the tax-exempt status permitted by State and federal law on the first 50% of the benefit, and possibly the survivor benefits which are paid at 100%.

We met with the County's Treasurer and Tax Collector, who is also a member of LACERA's Board of Retirement, to determine the extent to which he believes service-connected disability retirement claims may not be valid. In his opinion, approximately 50% of the Sheriff service-connected disability retirement claims reviewed each month are "questionable". "Questionable" cases are defined as those where the employee is already at or near retirement age, and where the employee has not recently sustained an injury. In other words, most of the injuries were either incurred many years ago and the employee is just now applying for a service-connected disability retirement, or the injury is what they commonly refer to as a "continuous trauma", where the employee alleges that due to the strenuous nature of the job, over time, his or her body can no longer perform the duties of the job.

To reduce the County's costs associated with service-connected disability retirements, the Treasurer agrees with the need to either pursue the legislative changes discussed above, and/or to abandon the "Full Range of Duties" policy adopted by the Sheriff and Fire Departments.

Details of these and other findings are discussed throughout the remainder of this report.

#### "Full Range of Duties" Policy

The Sheriff and Fire Departments assert that safety employees should be capable of performing the full range of duties and be available for redeployment in the event of an emergency. We see several problems with this policy:

- When a safety employee applies for a service-connected disability, the injury/disability is evaluated against the full range of duties, as opposed to what the employee was doing at the time of injury. For example, in practice there are employees who are not physically fit and would be unable to perform the more arduous tasks of the position if called upon to do so. Most of these employees are presumably in less arduous positions. However, if the employee incurs an injury/disability, their medical restrictions are evaluated against the full range of duties. If the injury/disability prevents them from performing the full range, the employee will be granted a service-connected disability.
- Employees in arduous assignments who incur an injury or disability may be fully capable of performing some of the duties within the "range" in which case disability retirements could be avoided if the individual is willing to accept a light or moderate duty assignment.

We met with the Sheriff and Fire Departments to determine their willingness to "narrow" or limit the range of duties, enabling injured or disabled employees to be evaluated against their current assignments (if not arduous), and/or to return to work and perform a light or moderate duty assignment if their previous assignment was in fact arduous.

Such a change would enable the Retirement Board to deny claims on the basis that the employee can fully perform the duties of his or her current (or future) assignment.

The Sheriff and Fire Departments are opposed to these changes. Their position is to continue with the full range of duties policy, limiting light and moderate duty assignments to a temporary basis only. The Departments cited the following reasons for maintaining this policy:

- Public safety considerations may become impaired if all Deputy and/or Fire Fighting personnel are unable to respond in the event of an emergency.
- Light or moderate duty classes would eventually become populated with employees who have work restrictions, not necessarily the individuals most capable of performing the job.
- Employees may be prevented from obtaining the "Full Range" of experience where some of the lighter duty assignments are filled with employees who have work restrictions.

A revision or modification to the full range of duties policy could have a significant impact on the number of service-connected disability retirements. It is this policy that prohibits employees from returning to work, and combined with the nature of the benefits available (below), perhaps entices or encourages the pursuit of a service-connected disability.

### Legislative Reform

The CAO's May 2000 report concluded that no significant reduction in the service-connected disability retirement rate could be expected unless changes in State law and negotiations with employee representatives take place. Two of the more significant changes recommended included the strengthening of the job causation requirement and "4850" reform.

#### Strengthening the Job Causation Standard

The report noted that a stronger, more definitive job causation standard is needed, similar to that found in the Los Angeles City Charter. That standard provides for service-connected disability retirement benefits when there is "clear and convincing evidence" that the job was the "predominant cause of the disability". Currently, the standard is less definitive, indicating that the job must have "contributed substantially" to the disability, with "substantial" meaning that the evidence supporting the job connection must be substantial, not the connection itself.

In our opinion, an amendment to strengthen the job causation standard, as discussed above, would have a significant impact on the number of service-connected disability retirements.

### 4850 Reform

Currently, Section 4850 of the Labor Code provides law enforcement and fire fighting personnel with special leave at full pay for injuries deemed compensable under the workers' compensation program. This benefit is payable for up to 365 aggregate days per injury and is a tax-free benefit, resulting in an increase in the employees' take-home pay while on leave.

The City of Los Angeles has a similar benefit for Police Officers. However, the benefit is paid at 100 percent of salary only if the disability is the result of "sudden, severe, traumatic injury." Where non-sudden, severe, traumatic injuries are present, the benefit equals the employee's gross pay reduced by the value of the State and federal withholding that is not required while the benefit is being paid. Accordingly, the City in essence keeps the State and federal withholding thus reducing its costs and preventing the increase in take-home pay that would otherwise result.

We believe the County's costs could be significantly reduced by an amendment to Section 4850 of the Labor Code that mitigates the increase in take-home pay that currently results in every case under this benefit.

### LACERA's Claims Administration Process as Compared to Other County's Surveyed

We compared LACERA's claims administration process to that used by the seven counties surveyed to determine if there are specific methods or controls in place that have helped to reduce or minimize the incidence of service-connected disability retirements. We evaluated the counties' service-connected disability retirement rates, and their hearing practices and procedures including investigative procedures. We also reviewed staff and/or Retirement Board denial rates to determine if an adequate review appears to be conducted prior to approval. Following are the results of our review:

#### Percentage of Service-Connected Disability Retirements

Overall, we found that Los Angeles County is not the only county experiencing high service-connected disability retirement rates. For example, Sacramento County reports an average rate of approximately 60% per year (see Footnote 1), while Ventura County reports an average rate for the most recent two fiscal years of 43%. Los Angeles' rate for the same two-year period was 51% (see Table 1, page 7). Kern and Orange do not appear to be as high, although their statistics are based on calendar year figures and at the time the data was compiled, calendar year 2000 was still significantly incomplete.



**Table 1**  
**Percentage of Safety Member Service-Connected Disability Retirements**  
**Fiscal Years 1998 through 2000**

County	FY 1997/98	FY 1998/99	FY 1999/00	Average for last 2 Fiscal Years	Average for last 3 Fiscal Years
Los Angeles	62%	57%	46%	51%	54%
Alameda <sup>2</sup>	N/A	N/A	N/A	N/A	N/A
Kern <sup>3</sup>	N/A	N/A	38%	N/A	N/A
Orange <sup>3</sup>	37%	46%	22%	35%	33%
Sacramento <sup>3</sup>	60%	36%	29%	33%	49%
San Bernardino	30%	33%	26%	29%	30%
San Diego <sup>4</sup>	N/A	N/A	N/A	N/A	N/A
Ventura	27%	46%	41%	43%	38%

It should be noted that the disability retirement rates for the County's Fire Department are higher than the County's Sheriff's Department (see Table 2). The counties that we surveyed were unable to provide comparable statistics separating the Fire Department from the Sheriff.

**Table 2**  
**Percent of Safety Member Service-Connected**  
**Disability Retirements by Department**  
**Fiscal Years 1998 through 2000**

Department	FY 1997/98	FY 1998/99	FY 1999/00	Average for last 2 Fiscal Years	Average for last 3 Fiscal Years
Fire	75%	66%	50%	58%	64%
Sheriff	60%	55%	47%	51%	54%

Due to a number of service-connected disability retirements from other miscellaneous Departments (e.g., District Attorney, etc.), the averages (overall) for Los Angeles (Table 1 above) are lower than what the averages would be for the Fire and Sheriff Departments (Table 2).

<sup>1</sup> Most counties indicated that the percentages are low for this Fiscal Year, due to a number of outstanding/pending cases. Sacramento County indicated that they have a significant number of pending cases for both calendar years 1999 and 2000, and that the percentages for both years will probably reach about 60%, which is what their service-connected disability retirement rate generally runs.

<sup>2</sup> Alameda County chose not to respond to our survey or to our subsequent requests for information.

<sup>3</sup> The percentages are based on calendar year data (as opposed to Fiscal Year). Accordingly, the percentages for calendar year 2000 may be understated due to a significantly incomplete year's worth of data.

<sup>4</sup> The statistics provided by San Diego County were incomplete, and therefore were not included.

San Bernardino County reported service-connected disability retirement rates significantly lower than Los Angeles. However, we noted no significant differences or variations in their process that would seem to justify a lower rate.

#### Differences in Retirement Board Hearing Practices and Procedures

Of the counties that responded, most had processes comparable to Los Angeles. We did, however, identify several variations in the claims processes of the other counties surveyed. These variations are discussed below.

- **County Counsel Involvement in the Claims Process**

Most of the counties surveyed had County Counsel representing the Retirement Board in the claims administration process. LACERA hires its own counsel to represent them in the claims process.

- **Hearing Process Prior to Review by the Retirement Board**

In several of the counties surveyed, applications initially denied by staff are sent to hearing prior to review by the Retirement Board. In Los Angeles, a hearing is held only after the Retirement Board has denied an application and the employee appeals the decision.

Having the hearing prior to review by the Retirement Board may provide for a more independent review process. LACERA staff were opposed, indicating that it may delay the application process and employees would have to endure longer periods without pay. However, this would be true in the existing process if the Board denied the case and it subsequently went to hearing. LACERA staff did indicate that having the hearing prior to the Board's review might deter applicants whose cases have little merit from applying.

- **Review Committee Comprised of County (i.e., Risk Management) Personnel**

Through our surveys, we found a variety of individuals and committees are used to review service-connected disability retirement applications. For example, LACERA has a disability review committee comprised of LACERA staff (i.e., the Benefits Manager, the Disability Supervisor, a disability specialist/investigator, and a LACERA panel physician). In Sacramento County, applications are reviewed by a Medical Doctor from the County's Department of Human Resources and a county worker's compensation employee. Their recommendations are provided to the Retirement Board's Benefits Officer who evaluates the data and makes final recommendations to the Board. If the recommendation is to oppose, County Counsel is notified, and the Benefits Officer and County Counsel jointly make a final recommendation. In Ventura, the County's Risk Management section has sole

responsibility for reviewing applications and making recommendations to the Board of Retirement.

While some of these processes are different than that used in Los Angeles, the nature of the differences are such that they would not necessarily be a cause of the different service-connected disability retirement rates. For example, of the two counties that have a hearing process prior to the Board's review, one (Sacramento County) had service-connected disability retirement rates that were higher than Los Angeles, and the other (Ventura County) had rates that were lower than Los Angeles.

#### Denial of Safety Member Service-Connected Disability Retirement Claims

We evaluated the number of claims approved/denied by staff as well as the number of claims ultimately denied by the Retirement Board, to determine if the review process appears adequate (i.e., whether all claims submitted for service-connected disability retirement are approved, or whether sufficient reviews disclose inappropriate claims that are ultimately denied). We noted the following:

- For Fiscal Years 1997/98 through 1999/00, LACERA reports that of the 800 service-connected disability retirement applications reviewed by staff, 80% were approved. Of those approved by staff, the Retirement Board denied on average 3%.
- Of the 20% initially denied by staff, the Retirement Board overturned this decision 2% of the time and granted a service-connected disability retirement.

While it appears the Retirement Board is "automatically" approving applications as recommended by staff, staff are also recommending 20% of the claims be denied. Based on this, it appears staff are performing a thorough up-front review prior to consideration by the Board. Unfortunately, we were unable to obtain comparable statistics from the other counties surveyed.

#### Periodic Claims Audit/Review

We noted that LACERA has not had an independent audit of its claims administration process. A detailed review would include determining if claim files contain appropriate documentation; staff and Retirement Board decisions are adequately documented and supported; and generally, whether internal policies and procedures have been complied with.

PriceWaterhouseCoopers was recently hired to review LACERA's process for selecting contractors (i.e., panel physicians, attorneys/hearing officers, etc.), allocating services to them, and paying for their services. While a very important aspect of the claims process, a more extensive review could be conducted to include the items noted above. LACERA, as with any organization, should consider having periodic independent reviews of its internal operations. Periodic reviews ensure that processes are

functioning as intended, and identify weaknesses that may not be identified in the normal course of operations.

### 4850 Benefits

We were asked to determine the number of safety member disability retirement claims filed within one year following a 4850 claim by the member and to compare the results to at least five other 1937 Retirement Act counties.

To address this issue, we identified all safety employees taking a service-connected disability retirement between Fiscal Years 1997/98 and 1999/00, and determined how many of them used 4850 benefits during the twelve-month period preceding their retirement. We noted the following:

#### Fire Department

- 97% of safety members taking a service-connected disability retirement during the last three fiscal years used at least some (between 1 and 365 days) of their 4850 benefits during the 12-month period prior to retirement.
- 82% of safety members taking a service-connected disability retirement during the last three fiscal years used between 201 and 365 days (at least 55%) of their 4850 benefits during the 12-month period prior to retirement.

#### Sheriff's Department

- 86% of safety members taking a service-connected disability retirement during the last three fiscal years used at least some (between 1 and 365 days) of their 4850 benefits during the 12-month period prior to retirement.
- 55% of safety members taking a service-connected disability retirement during the last three fiscal years used between 201 and 365 days (at least 55%) of their 4850 benefits during the 12-month period prior to retirement.

While it appears a significant portion of the safety population is utilizing these benefits, it should be noted that the County's Sheriff and Fire Department personnel are entitled to these benefits under Section 4850 of the Labor Code. To effect a change to the number of individuals receiving these benefits, a change in the laws governing 4850 benefits would be necessary.

We were unable to obtain comparable statistics from the other counties surveyed. However, several of the counties indicated that substantially all employees retiring under a service-connected disability use some, if not all, of their 4850 benefits.

"Civilianization"

Overall, the Sheriff's Department reports significant progress towards civilianizing positions within the Department. While a positive step towards reducing or minimizing safety member disability retirements, we are unable to quantify the potential savings resulting from additional civilianization efforts. This is partially due to the Department's unwillingness to assist us during our review, and also in large part due to the number of unknown variables that would affect savings. For example, while the number of safety member service-connected disability retirements will decrease as a result of civilianization, there may be a corresponding increase in the number of general member, or civilian disability retirements. In addition, we are unable to estimate the number of disability retirements, the ages at which the employees will retire and the number of years of service each employee will have at the time of retirement.

The KPMG Peat Marwick (KPMG) management audit, issued in May 1997, recommended the Department complete and implement a comprehensive five-year civilianization plan. The Department agreed with this recommendation, however, the plan is not complete nor was a draft plan available for our review. The Department reports that the plan will be completed and implemented by December 2002.

Although no documented plan was available, the Department reports significant progress since the issuance of the KPMG audit. For example, the KPMG auditors reported a civilian population of 36%, which compared favorably with the benchmark agencies they reviewed. Currently, the Sheriff's Department reports a civilian population of 41%, which also compares favorably with the benchmark agencies we reviewed, as noted in Table 3 below.

Following are some of the civilianization efforts taken since the issuance of the KPMG audit:

- Over 60 Court Services Specialists replaced Deputy Sheriffs in serving court papers (i.e., subpoena's) to citizens.
- Approximately 600 Custody Assistants replaced Deputy Sheriffs in the jails (i.e., Twin Towers) and custody facilities.

**Table 3**  
**Comparison of County Sheriff Departments' Civilian Populations**  
**Fiscal Year 1999/00**

Los Angeles County	41%
Orange County	50%
Sacramento County	33%
San Bernardino County	42%
San Diego County	39%
Ventura County	40%

**AUDITOR-CONTROLLER**  
**COUNTY OF LOS ANGELES**

- 11 Forensic ID Specialists II replaced Deputy Sheriffs in conducting field and laboratory investigations and processing of crime scene evidence (i.e., fingerprints).
- Over 100 Law Enforcement Technicians replaced Deputy Sheriffs in conducting a variety of station desk duties such as processing complaints, dispatch, etc.
- Approximately 60 Operations Assistants replaced Deputies and Sergeants in conducting a variety of administrative duties such as budgeting and scheduling.

We attempted to identify additional positions for possible civilianization. However, the Department chose not to assist us, indicating that we did not have sufficient time to complete our review, nor did we possess the classification expertise needed to analyze the positions. Accordingly, if the Board wishes to pursue this issue, they need to instruct the Department to hire a consultant to assist them in identifying and evaluating additional positions, beyond what the Department has already identified, for future civilianization.

#### Light, Moderate and Arduous Duties

We were asked to provide an analysis of the savings from the use of "light, moderate or arduous" classifications by job function rather than rank. The following is an example of how the County could potentially reduce its service-connected disability retirement costs by utilizing these classifications.

Approximately 267 (one-third of the 800 applications referred to above) service-connected disability retirement applications are reviewed by LACERA staff each fiscal year. If 80% (or 214) are approved, and on average 20% (or 43) of these are below the 50% pensionable income level, then the County's costs will increase for these 43 retirements. If, however, we assume that one-half of the 43 individuals (or 22) could be placed in a light or moderate duty assignment instead of being retired, then the County could potentially save the difference between the 50% of pensionable income and the employees' earned retirement benefit at the time of the disability. For example, assuming the 22 individuals were at a 40% earned retirement benefit, and the average annual salary of a Deputy Sheriff is \$60,000, the annual savings to the County would be \$132,000  $[(50\% - 40\%) \times \$60,000 \times 22]$ .

We were also asked to determine how other law enforcement agencies under the 1937 Retirement Act utilize job classifications to reduce the number of service-connected disability retirement claims.

Of the six counties that responded to this survey question, none was utilizing job classifications (i.e., light, moderate and arduous) to reduce the number of service-connected disability retirement claims. In fact, all six of the counties indicated that their Sheriff Department enforces a full range of duties policy similar to that used in Los Angeles.



# COUNTY OF LOS ANGELES

## FIRE DEPARTMENT


1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294

(323) 881-2401

P. MICHAEL FREEMAN  
FIRE CHIEF  
FORESTER & FIRE WARDEN

January 23, 2001

TO: SUPERVISOR MICHAEL D. ANTONOVICH, MAYOR  
SUPERVISOR GLORIA MOLINA  
SUPERVISOR YVONNE BRATHWAITE, BURKE  
SUPERVISOR ZEV YAROSLAVSKY  
SUPERVISOR DON KNABE

FROM: P. MICHAEL FREEMAN 

SUBJECT: AUDITOR-CONTROLLER'S REVIEW OF  
SERVICE-CONNECTED DISABILITY RETIREMENTS

At the December 19, 2000 meeting, your Honorable Board adopted the recommendations contained in the Auditor-Controller's November 28, 2000 report regarding safety employees' service-related disability retirements. The Board further requested the Sheriff and Fire Chief to justify their opposition to changing the "full range of duties" policy requirements in their departments. This memorandum responds to the Board's request.

### Background

Fire fighter series employees are classified as "Class 4 Arduous" with requirements that they be able to perform a wide range of physically demanding functions. They are compensated based on the arduous and often dangerous functions they are required to perform. When they are injured in the performance of their duties, they are allowed under state law a specified period of recovery at full pay. When they are fit for duty, as determined by medical authorities, they are returned to duty. If they do not recover sufficiently to perform the "full range of duties," they usually pursue a service-connected disability retirement, which offers significant income tax and survivor benefit advantages.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

A HILLS	BRADBURY	CUDAHY	HAWTHORNE	LA MIRADA	MALIBU	POMONA	SIGNAL HILL
A	CALABASAS	DIAMOND BAR	HIDDEN HILLS	LA PUENTE	MAYWOOD	RANCHO PALOS VERDES	SOUTH EL MONTE
	CARSON	DUARTE	HUNTINGTON PARK	LAKEWOOD	NORWALK	ROLLING HILLS	SOUTH GATE
N PARK	CERRITOS	EL MONTE	INDUSTRY	LANCASTER	PALMDALE	ROLLING HILLS ESTATES	TEMPLE CITY
	CLAREMONT	GARDENA	INGLEWOOD	LAWDALE	PALOS VERDES ESTATES	ROSEMEAD	WALNUT
RDENS	COMMERCE	GLENDORA	IRVINDALE	LOMITA	PARAMOUNT	SAN DIMAS	WEST HOLLYWOOD
	CORONA	HAWAIIAN GARDENS	LA CANADA FLINTRIDGE	LYNWOOD	PICO RIVERA	SANTA CLARITA	WESTLAKE VILLAGE

4. While the Auditor-Controller's recommendation might possibly reduce the number of service-connected disability retirements, it is unlikely to reduce costs for the Fire District, the County, or LACERA. Service-related disability retirements provide primarily a federal and state tax advantage to the individual, with virtually no financial impact on County agencies.

#### **Reforms That Could Reduce Costs**

If more meaningful reforms are desired, the Chief Administrative Officer's May 5, 2000 report cites two major reforms that could probably significantly reduce the number and cost of disability retirements. These two reforms – strengthening the job causation requirement and 4850 reform – are summarized as follows:

- **Strengthening Job Causation Requirements**

Legislative changes to strengthen and clarify the job causation standards required to secure a service-connected disability retirement could probably significantly reduce the number of service-connected disability retirements. Other public safety agencies, operating under different rules, experience a lower rate of service-connected disability retirements.

- **4850 Reform**

The tax-free year of compensation allowed under state law ("4850 time") often precedes a service-connected disability retirement claim. This is very costly to the Fire Department since our emergency constant staffing requires that we backfill these positions at time-and-a-half overtime rates for up to a year for an injured fire fighter who is unlikely to ever return to duty.

A change to the full range of duty policy might only slightly reduce the number of disability retirements with little or no savings to the District. Other reforms, such as legislative changes of the job causation requirements for service-related disability retirements and 4850 reform are alternatives that could provide real cost savings to the taxpayers.

If you have any questions please feel free to contact me at (323) 881-2401.

PMF:lyg

c: Wendy Wiegman  
Randi Tahara  
Kevin Acebo  
Mishal Montgomery  
Jennifer Weston Plaisted



January 22, 2001

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
Los Angeles, California 90012-2766

Dear Supervisors:

**"FULL RANGE OF DUTIES" POLICY**

On December 19, 2000, the Board requested both the Fire and Sheriff's Departments to justify, through separate reports, their opposition to changing the "full range of duties" policy within their departments. This request was made after the Auditor-Controller's Office had conducted a review of service connected disability retirements involving safety employees, and then reporting that the policy contributed to the high rate of claims among County safety employees.

My staff and I have, once again, reviewed the "full range of duties" policy. We still believe that it is of the utmost importance that sworn personnel be capable of performing a full range of duties, and be available for deployment in the event of an emergency. To reduce the number of personnel that would be available in time of emergency could possibly jeopardize the safety of the residents in Los Angeles County.

There are certain positions within the "Class-4 Arduous" classification that may temporarily accommodate light or moderate duty personnel, but those positions are becoming fewer and fewer with the civilianization of many positions. Furthermore, many of the remaining positions are being used by personnel temporarily recuperating from an injury. If the "Class-4 Arduous" classification was modified to accommodate personnel restricted to light or moderate duty, the available positions would quickly be filled and personnel temporarily recuperating from injuries would have to remain off work. Any savings to the retirement

Board of Supervisors-2-January 22, 2001

system, which would result in a reduction to the County's contribution, would be negated by the subsequent increase in workers' compensation costs. Moreover, many positions that appear to be non-arduous require a certain expertise and those persons restricted to light or moderate duty may not necessarily possess that expertise. Furthermore, the limited duty employee's promotional opportunities would be severely limited.

As stated in the Auditor-Controller's review (page three), the cost impact to the County of modifying the "full range of duties" policy is not as significant as some might believe. There are other less critical ways of reducing the costs of service connected disability retirements. I believe that my continuing efforts in the civilianization of sworn positions and the investigation of false claims reduces service connected disability retirements (reflected in the Auditor-Controller's review, page 7, chart 2).

Most service connected disability retirements are granted to personnel over the age of 50 and that a "3% at age 50" type of retirement program would significantly affect the number of service connected disability retirements. This type of retirement formula would not only reduce service connected disability retirements, but would also attract potential Department employees; reduce the number of employees leaving County service prior to age 50; and induce the older, more injury susceptible, employee to retire. Additionally, a negotiated increase in the regular service retirement survivors' benefit with a commensurate reduction in the service connected disability retirement survivors' benefit could possibly reduce the number of those seeking service connected disability retirements.

Sincerely,

**LEROY D. BACA**  
SHERIFF

LDB:RLC:WGG:mcs  
(Risk Management Bureau)

cc: Undersheriff Stonich

Chief Aranda, Personnel & Training Division

Commander Rick Castro, Personnel & Training Division

Captain William Graves, Risk Mgmt. Bureau

Sgt. Scott Johnson, Risk Mgmt. Bureau  
File

## **Appendix 2**

# Debs says Ward caused job stress, gets disability pay

By JOYCE PETERSON

When Ernest E. Debs retired as Third District Supervisor in late 1974 his county pension was reliably reported to be \$36,000 a year.

Now the 73-year-old veteran public official is also drawing \$70 each week in tax exempt workers' compensation under a finding that his heart ailment was aggravated by the stress of his county job.

In fact, both Debs and the physician who examined him blamed the supervisor's "bitter" conflict with Supervisor Baxter Ward, Fifth District, as a major factor contributing to his illness.

A Workers' Compensation Appeals Board made the award to Debs last Nov. 12. The decision came to light only recently during discussion of the county's mounting costs of compensation.

In 1971-72 the county spent \$11.7 million for such claims. By 1975-76 the bill had gone up almost 400% — to \$42.7 million.

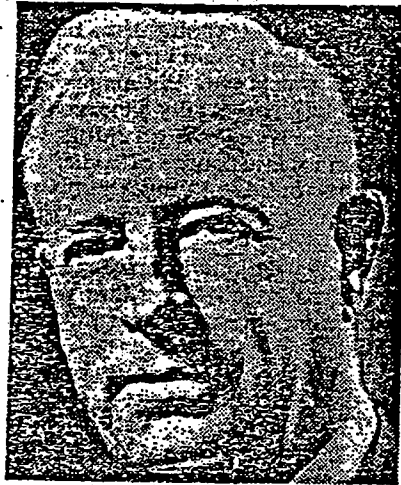
One reason for the increase, according to county officials, is a growing number of awards for illnesses aggravated by on-the-job stress. These are in addition to the more traditional payments made for injuries suffered at work.

It was in such a stress case that the appeals ruled that Debs had suffered a 76% permanent disability and was entitled to \$70 a week for 429 weeks.

This involves total payments of \$30,000 over the eight year period. The \$70 per week figure is the maximum under state law unless a worker is rated with a 100% permanent disability.

In addition, the award covers Debs' medical costs. William McClure, chief of the county personnel department's claims and compensation division, said that such expense could be "sizeable" but has not yet run very high.

Debs will receive the workers' compensation benefits without having to take any cut in the county pension he receives based on



ERNEST DEBS  
claims disability

his service with the county and other governmental agencies.

While retirement records are confidential, Debs' pension was unofficially reported at \$3,000 a month, or \$36,000 a year, when he retired in December 1974. Since then it has increased under annual cost-of-living adjustments of 3% a year.

The county also pays all or most of health insurance premiums for long-time employees when they retire.

Debs is not the only high-ranking county official to claim disability because of a heart condition.

Retired County Counsel John Maharg won a favorable workers' compensation ruling and is now battling with the county in court to have his pension calculated as a "service connected" disability.

Jennie Busch, widow of the late District Attorney Joe Busch, was awarded a \$45,000 death benefit on grounds her husband's fatal heart attack June 27, 1975 was brought on — at least in part — by job pressures.

During a recent board of supervisors' meeting, Ward said he had also heard reports that County As-

## Debs gets disability from stress

From Page 1

essor Phillip E. Watson might claim his heart condition was job-connected.

Watson has been in a running conflict with Ward over Ward's investigation of the assessor's office.

Debs' successful appeal for workers' compensation was based largely on his report of the tensions which built up after Ward was elected supervisor in 1972.

In a lengthy deposition, Debs said he was in "excellent" health when he left the city council in 1958 to become a supervisor.

He said that over the years he encountered no particular physical problems, except for periodic attacks of gas indigestion, even though the hours were long and there were frustrations.

"Sometimes I would leave at 7 o'clock in the morning for breakfast meetings," he said. "If I got home by 11 or 12 (midnight) o'clock, I was lucky."

During the mid 1960s, Debs said, it became more and more difficult to balance the county budget, employees formed unions and departments experienced growing pains.

Even so, the retired supervisor recalled that he had no "long-standing disputes" with his four colleagues.

"I would go home on Tuesday night, I felt like a wet dishrag. I don't know how a wet dishrag really feels but I was totally exhausted and very much upset."

Debs said he decided not to seek re-election in 1973 after his health became worse. He recalled that he was hospitalized three times in 1974 for heart irregularities.

# BUSCH'S WIDOW Seek Higher Pension

Feb. 13, 1977 Los Angeles Times 3

## Hopes to Prove Ex-DA's Death Was Job-Related

BY RICHARD BERGHOLZ  
Times Political Writer

On June 8, Jennie Busch, widow of former Dist. Atty. Joseph P. Busch, will go into a hearing to persuade the county Retirement Board that her husband's death in 1975 was service-connected—specifically that the "stress and strain" of the elected job caused his death.

If she wins, she stands to receive approximately \$24,000 a year for the rest of her life. If she fails to prove her case, the death benefit drops to less than \$9,000 a year.

Mrs. Busch already has been awarded \$45,000 in her husband's death benefits under the state's workers' compensation program, on the grounds the pressures of his job killed him.

Before that, former Supervisor Ernest E. Debs, who retired in 1974, won a \$30,000 disability award from the state program on the grounds that the pressures of being a county supervisor injured his heart. (The Board of Supervisors recently called for an appeal of the award to Debs, but the legality of such an action remains in doubt because the appeal deadline has long since passed.)

When Busch died June 27, 1975, county Coroner Thomas Noguchi listed heart disease as the cause of death.

Last Nov. 4, Workers' Compensation Judge Edmond E. O'Brien found that Busch's heart problem was "industrially caused" and awarded Busch's widow \$45,000.

But shortly before the district attorney died, he had undergone a comprehensive medical examination, including a "stress" test of his heart, at the county's cardio-pulmonary laboratory. And, according to attending cardiologists, Busch passed the test easily.

Evidence of the examination never was presented to O'Brien during the workers' compensation case by the two defendants in the action—the county of Los Angeles, which now is self-insured for such cases, and the state Compensation Insurance Fund, which insured the county until July 1, 1969.

In fact, neither attorneys for the county counsel's office nor the SCIF presented medical evidence available to them about Busch's health during his 23 years as a county employee.

The reason, the attorneys said, is that the laws governing workers' compensation cases are so tilted in favor of claimants that it is relatively unimportant what health conditions were prior to a claim.

Noguchi's autopsy report showed the alcohol count in Busch's blood at the time of death was .36%. One medical source said that would be the equivalent of approximately 21 one-ounce drinks in the system.

In drunk driving cases, a reading of .10% is a legal presumption of intoxication.

But there was no hearing in the Busch death benefit case and no extensive examination into the alcohol question in any of the documents and affidavits which made up the court file.

Noguchi said his department's autopsy report did not dwell on the high alcohol blood count, other than to list the medical evidence.

"We considered the alcohol as a possibility (as a cause of death), but there were uncertainties about timing, the length of time during which the alcohol might have been consumed," he said.

However, the coroner's report did note that, in addition to "occlusive coronary artery disease," Busch's death was caused by "fatty metamorphosis of the liver," frequently associated with long-term drinking.

Neither the county nor the SCIF challenged the judge's finding that Busch died of a heart condition, and that the pressures of his job had brought on the attack.

The case, one portion of which is now before the state Court of Appeal, is another example of the workings of the workers' compensation program

as it affects elected public figures and their survivors who claim the "stress and strain" of their jobs as a reason to collect disability and/or death benefits.

Debs, who won his \$30,000 award last year without appearing at a hearing, is now retired and collecting his award in \$70-a-week benefits.

But unlike Busch, who passed his heart examination, Debs had a prior record of heart problems. He had been hospitalized three times by heart attacks before his retirement.

The Debs and Busch cases have one common factor—fights with Supervisor Baxter Ward.

Debs, in claiming his benefits, argued that his frequent tiffs with Ward left him like a "wet drag" and brought on his disability.

Busch's widow said in a deposition that Busch felt he was being "harassed" by Ward. And a former Busch aide, Tom McDonald, told the hearing in another statement that Ward's "continual attacks" left Busch "nervous and distracted."

There is little argument that for most of Busch's 23 years in the district attorney's office, he had been in "pressure" situations. He was in extensive trial work and had carried a substantial administrative load before his appointment as district attorney in 1971.

**Widow claims Busch  
felt he was harassed by  
Supervisor Ward.**

FRIDAY, MAY 13, 1977

# BUSCH WIDOW

Continued from First Page

Various associates said that in addition to running the nation's largest law office, Busch was subjected to frequent death threats and during the turbulent late 1960s and beyond, there was continuing concern he or members of his family might be kidnaped and held hostage for release of prisoners then in custody.

This was particularly troubling during and after the Charles Manson trial, associates said.

Nevertheless, records indicated Busch appeared to enjoy relatively good health until his death. He had been hospitalized twice in 1973 for an operation on his hand and for a hernia operation.

He had been told by his doctors to stop smoking, stop drinking and lose weight.

On the night he died, hearing records showed, Busch had hosted a dinner party at his West Covina home for the wedding party rehearsal for his son, Steven, due to be married two days later.

According to Busch's widow and another son, Joseph P. Busch III, he helped wash dishes and pots and pans afterwards, then went to bed before 11 p.m. His wife discovered he had died when she sought to awaken him the next day.

Busch's son, Joseph, told the hearing he saw his father drink one beer and one glass of wine and nothing else during the evening.

When his father went to bed, the son said, he appeared "quite relaxed."

"You could tell he had been drinking. You could smell it on his breath," he said. But he appeared sober, he did not slur his speech and his "motor faculties" appeared to be under control, the son said.

The autopsy report showing evidence of heavy drinking never was explained in the hearing records.

Dr. Morton D. Kritzer, accepted by both the county and Busch's widow as a medical expert, first filed a report on May 4 last year that totally ignored the alcohol blood count.

Then, without explanation, Kritzer came in with another report Sept. 24 which for the first time recognized the autopsy report on the alcohol presence in the blood.

"The finding of this remarkable high blood alcohol count really is quite confusing to me," the doctor said.

"In reviewing this, there certainly could have been a contribution to his death by this high blood alcohol if the finding is correct, and I see no reason to doubt it."

But then Kritzer concluded that the alcohol in his blood had nothing to do with his occupation, and he went back to his basic conclusion—that Busch had a bad heart, that the cause of death was clear and "I see no reason to change my opinion regarding that, insofar as his occupation is concerned."

Kritzer had a change of opinion on another subject—when did Busch develop his on-the-job disability and who should pay for it?

In his first report, Kritzer decided that Busch's heart problem centered on the period from 1973 to 1975. In his second report, he changed his mind and said it appeared to him Busch had been "in a stressful situation for a lifetime, or at least a lifetime that he worked as deputy district attorney and district attorney."

He concluded that the stresses were greater in the final years and settled on a split of 80-20 in liability—80% chargeable to the county for the period from 1969 to 1975, and 20% to SCIF for 1952 to 1969.

But Judge O'Brien ultimately decided that controlling case law required an allocation of responsibility strictly on "time lines"—which meant that SCIF, which covered Busch most of his employment term, should bear most of the cost allocation of the \$45,000 settlement.

Attorney David Zimmerman, representing SCIF, has taken that part of the decision into the appellate courts. SCIF, he said, will contend the time-line allocation is unconstitutional.

O'Brien, who had been a deputy sheriff and deputy district attorney before becoming a judge, is not entirely satisfied with the hearing—or with the way the workers' compensation system works.

The lawyers in the Busch case at one point sought to submit the whole matter to O'Brien without a hearing or direct testimony, the judge related in a recent interview, "but I said 'no' in view of the high blood alcohol count. I said some testimony was required."

However, the judge then permitted Mrs. Busch and her son to file depositions dealing, in part, with how much Busch had been drinking the night he died. But no attempt was made to reconcile the depositions with the autopsy finding.

O'Brien emphasized that state law and court decisions have limited a judge's discretionary authority in compensation cases.

He deplored the common practice of soliciting opinions from rival sources of medical opinion—from those who usually testify for claimants and for those who are hired by insurance carriers and employers.

# County Grand Jury Urges Disability Pension Reforms

Says System Does Not Protect Taxpayer Interests; Urges Tighter Review of Claims Filed by Workers

BY BILL FARR  
Times Staff Writer

The Los Angeles County Grand Jury, citing the cost-cutting spirit of Proposition 13, Thursday recommended that the county Retirement Board tighten up on its granting of disability pensions.

Michael Boran, chairman of the grand jury's audit committee, said the jury has been concerned for some time about the increasing numbers and escalating amounts paid to county employees for job-related injury or illness.

Boran said statistical studies show that during the last half of 1977, a total of 151 service-connected disability awards were granted, which he described as a marked increase over the first six months of last year.

"There are several factors," Boran said, "which may encourage a county employee to seek service-connected disability retirement."

He cited the following Retirement Board policies as being those which provide such encouragement:

- There is no requirement that an employee accept any other position in the county, even though the work could be performed despite the disability.

- There is no coordination of benefits with Social Security or other employment that the disabled employee may obtain after leaving county work.

- The increasing tendency of court judgments to support claims based on the "stress-strain" of employment without any specific injury.

- The continuation of benefits to an employee's family after his or her death.

The county Retirement Board, Boran explained, is designed to be representative of both the county government and retirement association members.

"The board is to be impartial and make its decisions on the evidence presented," he added, "but all too often."

Please Turn to Page 17, Col. 3

## GRAND JURY

Continued from Third Page

ten all of the evidence submitted is that of the claimant. There is no means provided for hearing contrary evidence or for conducting a hearing in which the interests of the taxpayers are represented."

The grand jury made the following three recommendations to improve the situation:

- Formulation of clear criteria for determining whether a valid service-connected disability claim exists.

- Changes in retirement plan provisions which would stimulate the employees' incentive to return to work as soon as possible.

- Strong administrative leadership should be shown with adequate support staff to perform needed investigatory functions.

## JURY URGES PENSION CRACKDOWN

to perform needed investigatory functions.

Michael Boran, chairman of the audit committee, outlined several factors which may encourage a county employee to seek service-connected disability retirement.

Boran said that loose supervision over retirement benefits "could conceivably enable a disabled retired worker to collect county retirement, worker's compensation and social security benefits all at the same time."

The county pays an average of \$413 a month to employees claiming disability retirement.

19,298 persons receiving \$5,746,776 a year.

That marked increase prompted the grand jury to recommend that the retirement board be assisted in making responsible decisions by:

- Formulating clear criteria for determining whether a valid service-connected (on-the-job) disability claim exists.

- Changing retirement plan provisions which maintain the employee's incentive to return to work as soon as possible.

- Creating strong administrative leadership with adequate support staff

The County Grand Jury yesterday recommended a crackdown on costly pensions paid to county employees who retire on grounds of job-related injuries or illnesses.

The audit committee of the Grand Jury said a year-long study of the county board of retirement and the retirement system showed that 51 percent more persons were receiving disability pensions in 1977 than in 1974.

In December 1974, a study showed that 15,769 retired county employees had received \$63,421,620 in disability retirement pensions in a year's time.

In June 1977, those figures jumped to

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H. EXAM.*



# Ex-Assessor Watson Wins Disability Benefits Case

By VICTOR MERINA

Times Staff Writer

A workers' compensation judge has ruled against the county in favor of former Los Angeles County Assessor Philip E. Watson, awarding the one-time official pension and disability benefits that could amount to nearly \$74,000.

In his ruling, which will be appealed by the county, Judge David Marmor found that a heart condition suffered by Watson was job-related. Watson, who resigned in 1977, had claimed that job stress was responsible for the heart surgery that led to his eventual retirement.

In agreeing with Watson, Marmor held the county liable for workers' compensation benefits including \$30,047 for permanent disability, to be paid in weekly installments over an eight-year period.

The payments are retroactive to Sept. 30, 1977, and when they end, a lifetime weekly pension of \$25.85 will begin, the judge ruled. If the 55-year-old Watson lives to his normal life expectancy of 75, the pension payments would amount to nearly \$19,000.

In addition, Marmor ruled that the county must pay \$25,000 for Watson's open-heart surgery to the private insurance carrier that paid the bill as well as reimbursing any other past or future medical costs for the heart condition.

The Jan. 11 action, disclosed this week in a memo to the Board of Supervisors, came nearly three years after Watson had filed his claim.

Watson, who now lives in West Covina, said Friday he was pleased with the judge's decision. "I always like to win one," he said.

Watson added that he never would have filed a workers' compensation claim if he had not been assured by County Counsel John Larson that he was eligible and that his application would not be contested.

Larson, however, denied Friday that any such assurance had been given Watson, calling Watson's version "hogwash." He said his office would appeal the judge's decision to the Workers' Compensation Appeals Board in San Francisco.

Watson served nearly 15 years as county assessor and before that, 24 years in the assessor's office as an appraiser. And he already is drawing a \$24,750-a-year job-related disability pension previously awarded by the county Retirement Board.

The board, in ruling that his illness was job-related, granted Watson 50% of his \$49,500 assessor's salary.

In making its decision, the retirement board considered the question of whether Watson had performed his particular county job. The workers' compensation judge ruled that he had.

LA TIMES  
2-2-80

## EX-ASSESSOR WATSON

Continued from First Page  
compensation issue revolves around whether a person can sell his general job skills on the open labor market.

Watson, who has found himself a controversial figure both in and out of office, defended the benefits he has received. "My pension is something I

bought and paid for during my years with the county," he said.

Watson's attorney, Eugene Marais, also said the county's opposition to his client's claim has led to the increased benefits. "If it hadn't been Phil Watson in this case, this never would have gone to hearing and could have been settled for less," he said.

Watson underwent major heart surgery in February, 1977, after months of battling the Board of Supervisors—particularly Supervisor Baxter Ward—over his assessment practices. He returned to work briefly and announced his intention to seek a fifth term as assessor, but then reversed himself, saying he would seek retirement instead because of his ill health.

Lately, Watson has been mentioned as a possible supervisory candidate against incumbent Yvonne Brathwaite Burke, but he said Friday that chances were now "slim and none" that he would run.

# Pension loophole

## County relaxes

# grows

## requirements for job-related disability

By Troy Anderson  
Staff Writer

The loophole that won Sheriff Sherman Block's widow a \$232,908 annual pension will expand under a new law to allow police and firefighters to claim full disability benefits for cancer without proving a job-related connection.

The new law that takes effect Jan. 1 opens the possibility that an overwhelming number of law enforcement officers and firefighters could claim full pay benefits years after their retirement. It also allows their widows or widowers to claim full pensions in case of their deaths.

The current law allows them to take full disabilities for heart conditions and other ailments.

Officials have no estimate of what the cost would be to city and county governments, which already pay heavily into employee pension funds.

Los Angeles County alone pays \$243 million a year in contributions to pensions plans and officials expect that figure to rise sharply under the eased rules.

"A disability pension is not supposed to be a life insurance policy," County Supervisor Zev Yaroslavsky said in an interview last week.

"I'm after giving our pension boards some discretion to use common sense, something that has not been evident in recent years."

Yaroslavsky and Supervisor Gloria Molina last week introduced a motion calling for a study of how to contain the soaring cost of public employee pensions through new rules and legislation.

The Los Angeles City Council also has ordered a study of the city's soaring worker compensation costs, now at \$120 million a year.

Approval two weeks ago of a full pension for Block's widow Alyce, even though his death was directly related to a bathtub fall, triggered widespread anger.

She was entitled to only a 60 percent pension except for rules that pension board members said required them to find the sheriff — the nation's highest paid public official — was weak and in ill health because of the long-term stress of his job.

The new law eases the rules even more. It holds that firefighters and law enforcement officers can claim full disability pensions regardless of their health, lifestyle and job duties and without proving any "reasonable link" to their jobs.

County Tax Collector-Treasurer Mark Saladino said the new law is an example of laws public safety unions push through, unfairly granting pensions to people who do not deserve them.

### Increase expected

Saladino, an ex officio member of the Los Angeles County Employees Retirement Association Board of Retirement, said he expects an increase in firefighters and police officers seeking cancer presumptions, which could cost the county "hundreds of thousands of dollars" or significantly more.

"Nobody really knows what the effect will be," he said. "You don't know if we're going to see a lot of cancer cases coming out of the woodwork."

Pat Moran, a legislative advocate for the California Firefighters Association, said the law was prompted by the death of a firefighter from cancer.

"Firefighters are exposed to a whole host of carcinogens," Moran said. "This is expected of us and we don't have a problem with it. Our position is, if we're asked to do a job that exposes us to deadly diseases, then at least we're covered for our jobs."

On Tuesday, the Board of Supervisors is expected to order a study of proposals to reform county codes and state laws governing the pension system.

In their motion, Yaroslavsky and Molina said big pensions like the one to Block's widow are ultimately paid by the county and its employees who contribute to the pension plan. They said the rules governing the LACERA pension plan should not be exploited like this.

"We want our county people to develop legislation that would restore common sense to the disposition of these job-related disability pensions," Yaroslavsky said.

LACERA manages \$28 billion in pension funds for 120,000 former and current county employees. The county contributes about \$243 million a year and county employees contribute from 4 to 14 percent of their salaries.

But they do not have to pay Social Security taxes.

Critics, including pension fund officials, have lambasted what they call "shocking examples of pensions" particularly law enforcement officers who easily win job-stress benefits despite health problems such as obesity and alcoholism.

They say a high percentage of firefighters and law enforcement officers are given full disability pensions like Block.

### Plan defended

Marsha Richter, chief executive officer of LACERA, defended the pension plan payments, saying most of its nest egg is the result of a decade-long stock market boom. As of June 30, 1999, the fund had \$28.04 billion in it and was 99 percent funded.

"We got a lot of calls from people outraged that this money was spent from taxpayer money," Richter said. "But more than 80 percent of what we pay out comes from investment earnings."

Jon Coupal, president of the Howard Jarvis Taxpayers Association, said disability pensions like ones that will be generated by the new "cancer presumption" law are "extremely costly" to taxpayers.

"It's artificially inflating these benefits to the detriment of taxpayers," Coupal said. "This stuff is extremely costly, and when one compares disability retirements with the private sector, the public sector is way out of line."

Last month, Gov. Gray Davis signed AB 539 by Assemblyman Lou Papan, D-Millbrae, which modifies the illness presumption for firefighters and police officers. Under existing law, if a public safety officer develops cancer, it is presumed to be connected to their job if they can show an on-duty

exposure to a known carcinogen, which has been "reasonably linked" to the type of cancer that has developed.

The new law deletes the requirement to demonstrate the carcinogen is reasonably linked to the cancer.

"Right now you can file for cancer presumption if you can prove your cancer is related to a cancer exposure, which is very hard to prove," Saladino said. "The presumption makes it easier to prove, so I expect we'll have a lot of cases."

Saladino is also concerned by provisions in the law that will allow firefighters and police officers who have been retired for up to five years to make a disability claim.

### Statewide problem

Yaroslavsky said public employees seeking disability pensions for heart problems is already a problem statewide.

"I don't think we can dismiss the

legitimate concerns of public safety employees, but anybody can claim their heart condition is a result of stress on the job," he said.

"There has to be some common sense. If you are shot in the line of duty, it's a job-related disability. If you're hit by a car on duty, it's a job-related disability."

"If you get cancer... it's harder to make the case you should get a full disability pension. If you do, then it begins to function like a life insurance policy and not a disability pension."

Yaroslavsky's and Molina's motion Tuesday calls on the chief administrative officer, county counsel, the director of personnel and LACERA to report back to the supervisors in 60 days with:

- A review of job specifications for public safety employees to determine whether descriptions of physical exertion on the job are appropriate for people holding the same position and recommend new classifications if warranted.

- A review of the feasibility of

moving employees in arduous jobs into less physically demanding jobs after a certain period of time or at a certain age, or both.

- A review of county policies that allow disability to be "service connected" based on injuries suffered outside work.

- A review of worker's compensation in relation to disability pensions and a report back to the supervisors on limiting benefits to the extent disabilities result from nonindustrial causes.

- A report proposing state legislation that makes it harder to prove heart, cancer and other health presumptions.

Daily Bulletin, Monday, November 15, 1993

## L.A. County relaxes standard for disability related to work

By Troy Anderson  
Staff Writer

LOS ANGELES — The loophole that won Los Angeles County Sheriff Sherman Block's widow a \$232,908 annual pension will expand under a new law to allow police and firefighters to claim full disability benefits for cancer without proving a job-related connection.

The new law that takes effect Jan. 1 opens the possibility that an overwhelming number of law enforcement officers and firefighters could claim full pay benefits years after their retirement. It also allows their widows or widowers to claim full pensions in case of their death.

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Officials have no estimate of what the cost would be to city and county governments, which already pay heavily into employee pension funds.

Los Angeles County alone pays \$249 million a year in contributions to pensions plans and officials expect that figure to rise sharply under the eased rules.

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She was entitled to only a 60 percent pension except for rules that pension board members said required them to find the sheriff, the nation's highest paid public official, was weak and in ill health because of the long-term stresses of his job.



December 18, 2006

David E. Janssen  
Chief Administrative Officer  
County of Los Angeles  
500 West Temple Street  
Room 713  
Los Angeles, CA 90012

Re: Performance Review of Service-Connected Disability Retirements  
for Safety Personnel

Dear Mr. Janssen:

The Los Angeles County Employees Retirement Association (LACERA) submits this comment letter regarding the draft report prepared by Buck Consultants entitled "Performance Review of Service-Connected Disability Retirements for Safety Personnel." This letter is to be included in the Final Report submitted to the Board of Supervisors.

### INTRODUCTION

Buck Consultants (Buck) was retained by the County to, among other things, "identify whether or not fraud or abuse of the [service-connected disability retirement] application system exists."

Buck reviewed 34<sup>1</sup> disability retirement case files in which a service-connected disability retirement had been granted by the Board of Retirement.<sup>2</sup> Buck found no cases of fraud and its factual findings failed to disclose any cases of abuse of the system.

LACERA recognizes that the adjudication of disability retirement cases is one of its most important functions. Substantial resources are thus devoted to assure this critically important task is carried out in strict conformance with the County

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<sup>1</sup> Buck was asked to review 35 cases. One file selected by Buck for review inadvertently included a denied case. Consequently, the review performed by Buck involved 34 cases.

<sup>2</sup> The County's statement of work required Buck to review case files involving safety members. Buck reviewed (5) cases involving employees of the Probation Department and five (5) cases involving employees of the Office of Public Safety. Although employees of these two (2) departments are not safety members, we do not believe this had any impact on Buck's conclusions.

Employees Retirement Law of 1937 (CERL) and Article XVI, Section 17 of the California Constitution.

LACERA's procedures have been examined several times in the past and have always been found to be appropriate, complete, and in conformance with governing law. On May 5, 2000, following a six (6) month County review of the disability retirement program, the Chief Administrative Officer reported to the Board of Supervisors:

Based on experience over the past three years, approximately 53 percent of all safety member retirements are service-connected disability retirements. This rate is largely attributable to a 1937 Retirement Act job causation "test" that does not require the job to be the predominant cause of the disability. Without statutory relief in this and other parts of the program, we think it unrealistic to envision any significant reduction in this rate in the future. (Buck Report, Appendix 1.)

In July 2001, the Auditor-Controller contracted with KPMG LLP to conduct a review of LACERA's disability retirement applications. Following an intensive 6 month evaluation, KPMG reported:

KPMG found the [Disability Services] Division files that we reviewed to be complete pursuant to LACERA policies, procedures and practices. All required relevant documents and information were in the files we reviewed. The files themselves were consistently organized in the same manner for all types of applications. All actions taken by the Board were documented in the files. Medical evaluations provided by LACERA consulting physicians met LACERA requirements for completeness.

...

LACERA's physician recruitment and selection policies, procedures and practices are based on the objective of obtaining qualified and objective medical determinations regarding the ability of disability applicants to perform their job duties. Our review of LACERA documents and files, interviews with LACERA staff and applicant attorneys, and observation of Board meetings did not uncover any instances where there was a bias against the full review of all relevant medical information, nor any deviation from established LACERA policies and procedures.

We should also note that the Board, and LACERA staff, devotes a substantial amount of time to reviewing and discussing the medical reviews of disability applicants. Within its legal and administrative framework, LACERA devotes considerable resources to ensuring that all relevant medical information is obtained and reviewed before the Board makes a decision.

Buck was "in complete agreement" with the Board of Retirement's decisions in 25 of the 34 cases reviewed. (Buck Report, pg. 6.) In one case, Buck did not reach a determination, noting "it was not provided with sufficient medical documentation to form an opinion." As to the remaining 8 cases, Buck did not dispute the correctness of the Board's decisions granting service-connected disability retirements, but noted that if the disability law had been reformed in accord with certain Buck recommends set forth in its Report, the Board of Retirement would have been justified in reaching a different decision.

In summary, except for one (1) case in which supporting medical evidence was no longer available, Buck's determination not to be "in complete agreement" with all of the Board of Retirement's decisions was based on Buck's belief the law should be reformed, not on its belief the Board of Retirement's decisions were not supported by the law or the evidence.

### **COMMENTS ON PARTICULAR REPORT FINDINGS AND CONCLUSIONS**

#### **Results of Survey of '37 Act Counties (pg. 7)**

Buck issued a survey to a subset of government agencies providing disability benefits. Such agencies service a diverse population of workers in urban, suburban and rural areas. The purpose of the survey was to identify possible causes for different disability benefit approval levels among the various agencies.

Buck states that "[t]he survey results appear to indicate that a more liberal standard is being applied by LACERA."

LACERA respectfully disagrees with Buck's conclusion. The evidence does not support that conclusion. A more likely scenario is that a greater percentage of safety members in Los Angeles County apply for a disability retirement, as compared to other 37 Act Counties.

We offer the following to support LACERA's contention that the Buck conclusion is erroneous and should be disregarded:

- In Santa Barbara County, during fiscal year 2003-2004, 8 safety members filed for a disability retirement. All but 1 were granted a disability retirement. In fiscal year 2004-2005, 5 applications for disability retirement were filed by safety members and all were granted.

- In Ventura County, during fiscal years 2003-04 and 2004-05, 42 members applied for a disability retirement. All but 2 were granted a service-connected disability retirement.
- In Merced County, during calendar years 2001 through 2005, 95 disability retirement applications were approved. Only 11 were denied.

The foregoing statistics support the conclusion, previously reached by the County in its own 2000 study, that the high rate of service-connected disability retirements "is largely attributable to a 1937 Retirement Act job causation 'test' that does not require the job to be the predominant cause of the disability."

Therefore, a reasonable conclusion would be that environmental or structural factors play a role in the level of disability benefits granted to injured workers in a particular jurisdiction. For example:

- Working conditions in Los Angeles County for safety members are more dangerous and employees are exposed to a higher risk of injury.
- Other counties find it easier to accommodate injured workers with light duty positions. Los Angeles County safety departments do not maintain permanent light duty positions for injured safety personnel.

#### **Record Retention Period (pg. 11)**

At the time Buck performed its review, LACERA's record retention policy provided for the discard of certain disability records one year after approval of an application. Buck recommends retention of all files for at least five years and preferably for seven years.

LACERA agrees that a longer retention period is warranted. On March 2, 2005, the Board of Retirement revised the document retention policy to require retention of disability retirement files and records for a minimum of three years. Records will be retained for six years when an application for disability retirement is denied.



### CONCLUSION

LACERA was pleased to cooperate with the County commissioned review of the disability retirement process. The LACERA Board of Retirement remains committed to a process that thoroughly evaluates disability retirement applications and assures that applications are granted or denied in accordance with the governing statutes.

Respectfully submitted



GREGG RADEMACHER  
Chief Executive Officer

**COUNTY OF LOS ANGELES  
SERVICE CONNECTED DISABILITY RETIREMENTS UNDER  
COUNTY EMPLOYEES RETIREMENT LAW OF 1937**

**EXPENSE REDUCTION RECOMMENDATIONS, AS PREPARED BY  
BUCK CONSULTANTS LLC**

On January 4, 2005, the County of Los Angeles (County) Board of Supervisors instructed the Chief Administrative Office (CAO), the Auditor-Controller (A-C), and the Los Angeles County Employees Retirement Association (LACERA) to investigate and report on the County's Service Connected Disability Retirements (SCDR).

Buck Consultants LLC (Buck) was retained to conduct the review and subsequently published its *County of Los Angeles Performance Review of Service Connected Disability Retirements for Safety Personnel*. This Attachment summarizes Buck's recommendations for reducing the frequency and cost of SCDRs as identified on pages 15 through 19 of Buck's report. Seven of Buck's 15 recommendations are essentially the same as recommended by the CAO in March 2005. The seven recommendations are:

Recommendation 1: *Tighten the causation standard.*

Doing so addresses the problems created by State of California case law, especially *Brown vs. Board of Retirement*, that enables applicants to receive SCDR based on only, "...a slight degree of (job) causation..."

Recommendation 2: *Facilitate return-to-work.*

Maximize the number of non-arduous return-to-work assignments without reducing protection of, or service to, County citizens.

Recommendation 3: *Coordinate benefits.*

Reduce SCDR payments when a SCDR-retiree also receives workers' compensation benefits.

Recommendation 5: *Reduce benefits for other employment.*

Reduce SCDR payments for other employment if the SCDR retiree performs similar work for another public entity.

Recommendation 8: *Limit use of the 100 percent survivor benefit.*

Limit the 100 percent survivor benefit to survivors of safety employees killed in the line of duty. According to Buck, the 100 percent surviving spousal benefit costs the County approximately \$15 million a year.

Recommendation 10: *Require SCDR to avoid [State of California Labor Code] 4850 payments.*

Should the employee's medical condition preclude him/her from returning to work, allow the County to immediately initiate a SCDR and avoid Labor Code 4850 payments.

Recommendation 13: *Allow reevaluation of disability up to age 60.*

Currently, SCDR retirees can only be medically reevaluated up to age 55.

The CAO does not concur with one of Buck's recommendations.

Recommendation 4: *Apportion benefits.*

CAO does not support this recommendation. Apportionment of disability between occupational and non-occupational causes would only affect a minimal number of applications with benefit levels above the 50 percent salary threshold. In addition, if apportionment reduces SCDR benefits below the 50 percent threshold, it may preclude injured younger employees from leaving service (working injured) until they can secure higher disability payments. This negates the purpose of an SCDR and may reduce the quality of critical services to citizens.

Because of the financial impact on future SCDR applications and benefits, more study is necessary before the CAO can support Buck's seven remaining recommendations:

Recommendation 6: *Provide and offset for income taxation.*

The CAO agrees that any disability program that increases an applicant's take-home-pay above the applicant's pre-disability take-home pay increases the frequency of disability claims and hinders the County's return-to-work effort. However, the purpose of the SCDR tax shelter is to simplify funding of disability expenses for employees injured early in their careers.

Recommendation 7: *Base benefit on severity.*

The 2003 and 2004 State of California workers' compensation reforms must mature before this recommendation can be considered. The State's disability rating systems are currently under review. The results should be published and analyzed before considering a similar system for County SCDRs.

Recommendation 9: *Implement a Deferred Retirement Option Plan [DROP].*

LACERA staff caution a DROP's ultimate cost may exceed its potential advantages.

Recommendation 11: *Change the definition of final pay.*

To initiate this recommendation, legislation is not necessary. However, should the definition of final pay only include an applicant's base salary, the County must assess payment of accrued vacation and other compensation one-time-only payments.

Recommendation 12: *Delay cost-of-living adjustments.*

To determine the effectiveness of this recommendation, an analysis of the recommendation's impact on the County's annual retirement contribution to LACERA and the benefit payments to SCDR and non-SCDR retirees is required.

Recommendation 14: *Require retirement from a reciprocal plan.*

Before this recommendation is adopted, the frequency and severity of reciprocal claims must be established and evaluated.

Recommendation 15: *Cap benefits at 50 percent of pay.*

Before this recommendation is adopted, a cost-benefit analysis study, including assessment to the injured workers is necessary.

**Conclusion**

Buck reiterates seven previous recommendations for reducing the frequency and the cost of SCDRs. The CAO does not concur with one recommendation. Seven of Buck's recommendations require further study.

Eleven of Buck's recommendations require legislative change.

Eliminating duplicate disability payments provided under other disability programs could achieve a balance between the original intent of SCDR legislation and the ultimate best interest of the County.



LEROY D. BACA, SHERIFF

County of Los Angeles  
Sheriff's Department Headquarters  
4700 Ramona Boulevard  
Monterey Park, California 91754-2169



May 12, 2006

David E. Janssen  
Chief Administrative Officer  
County of Los Angeles  
713 Kenneth Hahn Hall of Administration  
Los Angeles, California 90012

Dear Mr. Janssen:

"FULL RANGE OF DUTIES" POLICY  
OPPOSITION TO PERMANENT LIGHT DUTY POSITIONS

Your office requested the Fire and Sheriff's Departments, in separate reports, to articulate their positions regarding the creation of permanent light duty positions within their respective Departments.

As you are aware, on January 21, 2001, I wrote the Board explaining the Sheriff's Department's "Full Range of Duties" policy. As you requested, I directed my Department's Risk Management Bureau staff to again review our staffing policy. Based upon that review, my position on this issue remains the same. It is critically important for all sworn deputy personnel through the rank of sergeant to be able to perform the essential job functions of their "Class-4 Arduous" positions. Any reduction in these standards would reduce the ability of this Department to properly staff required safety positions, reduce staffing flexibility, and seriously impact our ability to properly respond during a time of emergency. If the Department were to reduce its staffing standards, it would only be a matter of time before a large class of sworn personnel would be created within the Department that would be unavailable for deployment in the event of a natural disaster, act of terrorism, or large civil disturbance.

While it is true that the creation of a class of permanent light duty positions would save the County a substantial amount of funds in the short term, over time, this class of personnel would grow and create serious staffing issues that would cause tremendous strain and additional costs to the Department and substantially reduce its efficiency and flexibility. The ability of the Department to staff necessary patrol, detective, custody, and court services positions would become extremely difficult.

*A Tradition of Service*

Additionally, any such program would increase Department overtime costs to replace the sworn members who were filling arduous positions, but were unable to perform the full range of work required of them.

The creation of a class of permanent light duty positions for employees who were previously eligible for a service connected disability retirement would quickly deplete the number of arduous positions available to meet the Department's needs. To illustrate the potential staffing, during calendar years 2003 and 2004, an average of 130 sworn sergeants and deputies received a service connected disability retirement for various reasons each year. Using this number as a guide to extrapolate, over a projected eight year period, 1,040 sworn personnel could receive service connected disability retirements. If, instead of retirement, the Department were forced to keep these employees on permanent light duty status, over 1,000 sworn positions could be eventually encumbered by personnel who would no longer be able to perform arduous law enforcement duties. To put this in perspective, the Department's Field Operations Region III, (which includes Lakewood; Norwalk; Pico Rivera; Industry; Cerritos; Walnut; and San Dimas Stations), has a budgeted sworn staffing level of 1,052 positions. In just eight years, my Department could lose the ability to utilize enough Class-4 Arduous personnel to staff an entire Field Operations Region.

In researching this issue, my staff contacted members of the Los Angeles Police Department which currently maintains a permanent light duty program similar to what has been proposed by some in our County government. As of December 2005, the LAPD was carrying 733 permanent light duty officers, several of whom were prohibited from carrying a firearm due to psychological problems. This program has proven extremely costly for the LAPD and has seriously affected their Department's ability to operate within required minimum staffing levels and increased their overtime costs. Their medial liaison unit indicated that this program has been deemed a failure and that new policy abolishing this program and requiring the transfer of all light duty personnel to other City Departments has been developed and is currently before Chief Bratton and the various unions.

There are sworn class-4 arduous positions existing in the Sheriff's Department to accommodate light or moderate duty personnel. However, the number of these positions has gradually diminished with the civilianization of the Department, (e.g. Custody Assistants, Law Enforcement Technicians, and Civilian Investigators, etc.). The creation of any permanent light duty program for sworn deputies and sergeants would undoubtedly have a negative impact on the number of positions available for these civilian classifications. Using civilian positions to accommodate permanent light duty sworn employees would further increase the costs to the Department.

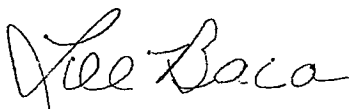
Most of the available sworn positions are already filled with employees who are temporarily recuperating from an injury or illness. The Department currently has 476 employees who are injured or ill and cannot perform their assigned job functions. Of this number, 163 are being temporarily accommodated in a modified light duty position during their recovery period (this includes pregnant female deputies). The creation of a permanent light duty class of employees would reduce the ability of the Department to be able to accommodate its employees who are temporarily recuperating from illness or injury and are expected to return to full duty status.

Department Managers continue to examine and improve their ability to retain sworn personnel who are retiring or attempting to retire on a service connected disability. I have advised my command staff to personally notify me when members of the Department of the rank of Lieutenant or higher seek a service connected retirement and cannot be accommodated. I believe these positions for Lieutenant and higher can be accommodated under most situations with most injuries.

I have directed my staff to work closely with the CAO Return to Work Unit keeping an open mind and bringing forward any proposed cost saving measures which do not compromise the primary mission of the Department. However, I cannot endorse a permanent light duty program because of the negative implications to the efficiency of this Department. If a light duty program were adopted, it would be extremely difficult to staff required arduous safety positions without increasing the Department's overtime budget or without asking the Board of Supervisors to increase the number of budgeted items to accommodate the estimated 1,000 sworn items that could be encumbered by this class of permanent light duty personnel.

With the ever-increasing threat of terrorism or the potential for natural disaster and civil unrest in our County, reducing the number of personnel available to respond to those emergencies would jeopardize the safety of all residents in Los Angeles County. There are no easy answers with this problem, but creating a permanent light duty program will increase the cost of doing business for the Department, will seriously interfere with our ability to staff critical law enforcement positions, and impede our ability to respond to emergency situations.

Sincerely,



LEROY D. BACA  
SHERIFF

Mr. David Janssen

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May 12, 2006

LDB:WJM:EBS:DWW:dww/mmc  
(Risk Management Bureau/Leadership and Training Division)

Enc.: Letter - 2001 "Full Range of Duties" Policy

cc: William J. McSweeney, Chief  
Eric B. Smith, Commander  
Rocky A. Armfield, CAO Risk Management



January 22, 2001

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
Los Angeles, California 90012-2766

Dear Supervisors:

**"FULL RANGE OF DUTIES" POLICY**

On December 19, 2000, the Board requested both the Fire and Sheriff's Departments to justify, through separate reports, their opposition to changing the "full range of duties" policy within their departments. This request was made after the Auditor-Controller's Office had conducted a review of service connected disability retirements involving safety employees, and then reporting that the policy contributed to the high rate of claims among County safety employees.

My staff and I have, once again, reviewed the "full range of duties" policy. We still believe that it is of the utmost importance that sworn personnel be capable of performing a full range of duties, and be available for deployment in the event of an emergency. To reduce the number of personnel that would be available in time of emergency could possibly jeopardize the safety of the residents in Los Angeles County.

There are certain positions within the "Class-4 Arduous" classification that may temporarily accommodate light or moderate duty personnel, but those positions are becoming fewer and fewer with the civilianization of many positions. Furthermore, many of the remaining positions are being used by personnel temporarily recuperating from an injury. If the "Class-4 Arduous" classification was modified to accommodate personnel restricted to light or moderate duty, the available positions would quickly be filled and personnel temporarily recuperating from injuries would have to remain off work. Any savings to the retirement

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system, which would result in a reduction to the County's contribution, would be negated by the subsequent increase in workers' compensation costs. Moreover, many positions that appear to be non-arduous require a certain expertise and those persons restricted to light or moderate duty may not necessarily possess that expertise. Furthermore, the limited duty employee's promotional opportunities would be severely limited.

As stated in the Auditor-Controller's review (page three), the cost impact to the County of modifying the "full range of duties" policy is not as significant as some might believe. There are other less critical ways of reducing the costs of service connected disability retirements. I believe that my continuing efforts in the civilianization of sworn positions and the investigation of false claims reduces service connected disability retirements (reflected in the Auditor-Controller's review, page 7, chart 2).

Most service connected disability retirements are granted to personnel over the age of 50 and that a "3% at age 50" type of retirement program would significantly affect the number of service connected disability retirements. This type of retirement formula would not only reduce service connected disability retirements, but would also attract potential Department employees; reduce the number of employees leaving County service prior to age 50; and induce the older, more injury susceptible, employee to retire. Additionally, a negotiated increase in the regular service retirement survivors' benefit with a commensurate reduction in the service connected disability retirement survivors' benefit could possibly reduce the number of those seeking service connected disability retirements.

Sincerely,

LEROY D. BACA  
SHERIFF

LDB:RLC:WGG:mcs  
(Risk Management Bureau)  
cc: Undersheriff Stonich

Chief Aranda, Personnel & Training Division  
Commander Rick Castro, Personnel & Training Division  
Captain William Graves, Risk Mgmt. Bureau

Sgt. Scott Johnson, Risk Mgmt. Bureau  
File



# COUNTY OF LOS ANGELES

## FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294  
(323) 881-2401

P. MICHAEL FREEMAN  
FIRE CHIEF  
FORESTER & FIRE WARDEN

June 5, 2006

TO: DAVID E. JANSSEN, CHIEF ADMINISTRATIVE OFFICER  
CHIEF ADMINISTRATIVE OFFICE

FROM: P. MICHAEL FREEMAN 

### PERFORMANCE REVIEW OF SERVICE-CONNECTED DISABILITY RETIREMENTS FOR SAFETY PERSONNEL

On September 26, 2005, Buck Consultants submitted a Performance Review of Service-Connected Disability Retirements (SCDR's) for Safety Personnel report to your office for review. The purpose of the review was to determine if fraud or abuse of the SCDR application system exists and to provide suggestions for improving the current system.

The report provided a number of recommendations intended to improve and reform the system. One of the recommendations posed, "*facilitate return-to-work*," would have an adverse impact on the Fire Protection District.

The District supports a limited duty and early return-to-work policy for injured safety personnel for those expected to fully recover and return to full duty. The District's policy is that safety employees not be permanently assigned to a position with limited physical requirements. If a safety employee is unable to meet the physical requirements of a position, they must retire. This policy ensures that all safety personnel are fully capable and available to perform all arduous duties required of a firefighter, regardless of their assignment.

Changes to the District's existing policy by the creation of permanent light duty positions would compromise our ability to staff required safety positions and reduce the number of personnel available to respond to emergencies.

SERVING THE UNINCORPORATED AREAS OF LOS ANGELES COUNTY AND THE CITIES OF:

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ARTESIA  
AZUSA  
BALDWIN PARK  
BELL  
BELL GARDENS  
BELLFLOWER  
BRADBURY

CALABASAS  
CARSON  
CERRITOS  
CLAREMONT  
COMMERCE  
COVINA  
CUDAHY

DIAMOND BAR  
DUARTE  
EL MONTE  
GARDENA  
GLENDALE  
HAWAIIAN GARDENS  
HAWTHORNE

HIDDEN HILLS  
HUNTINGTON PARK  
INDUSTRY  
INGLEWOOD  
IRVINDALE  
LA CANADA FLINTRIDGE  
LA HABRA

LA MIRADA  
LA PUENTE  
LAKEWOOD  
LANCASTER  
LAWNDALE  
LOMITA  
LYNWOOD

MALIBU  
MAYWOOD  
NORWALK  
PALMDALE  
PALOS VERDES ESTATES  
PARAMOUNT  
PICO RIVERA

POMONA  
RANCHO PALOS VERDES  
ROLLING HILLS  
ROLLING HILLS ESTATES  
ROSEMEAD  
SAN DIMAS  
SANTA CLARITA

SIGNAL HILL  
SOUTH EL MONTE  
SOUTH GATE  
TEMPLE CITY  
WALNUT  
WEST HOLLYWOOD  
WESTLAKE VILLAGE  
WHITTIER

David E. Janssen, Chief Administrative Officer  
June 5, 2006  
Page 2

Please be assured the District will continue to work closely with your Return-to-Work Unit staff to address this issue in an effort to bring about substantive changes in SCDR's.

If you have any questions, please contact me at (323) 881-2401 or Chief Deputy Gary M. Lockhart, at (323) 881-2478.

PMF:mk

c: Rocky Armfield, CAO ✓



# COUNTY OF LOS ANGELES

## FIRE DEPARTMENT

1320 NORTH EASTERN AVENUE  
LOS ANGELES, CALIFORNIA 90063-3294  
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Attachment D-2

P. MICHAEL FREEMAN  
FIRE CHIEF  
FORESTER & FIRE WARDEN

June 5, 2006

TO: DAVID E. JANSSEN, CHIEF ADMINISTRATIVE OFFICER  
CHIEF ADMINISTRATIVE OFFICE

FROM: P. MICHAEL FREEMAN 

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David E. Janssen, Chief Administrative Officer  
June 5, 2006  
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PMF:mk

c: Rocky Armfield, CAO ✓